TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 190[redacted]7

No. [redacted] 86.

CENTRAL TRUST COMPANY, APPELLANT,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES, AND FRED A. BUSSE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED FEBRUARY 27, 1908.

(21,045.)

(21,045.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 642.

CENTRAL TRUST COMPANY, APPELLANT,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES, AND FRED A. BUSSE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 7, 1908.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1906.

No. 1344

CENTRAL TRUST COMPANY,

Appellant,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES AND FRED A. BUSSE,

Appellees.

MR. DANIEL McCASKILL,

Counsel for Appellant,

MR. HUGO PAM,
MR. HARRY B. HURD,

Counsel for Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Christian C. Kohlsaat, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the seventeenth day of October, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and six, and of our independence the one hundred and thirty-first year.

MARSHALL E. SAMPSELL,
Clerk.

3 IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois

Eastern Division,

Central Trust Company,
vs.
Central Trust Company of Illinois, William R. Dawes and Fred A. Busse. } In Chancery.

Be it remembered that on this day to-wit: the twenty-second day of June, 1906, come the Central Trust Company by its solicitors McCaskill & Son and filed in the clerk's office of said Court a certain Bill of Complaint in words and figures following to-wit:

4 BILL OF COMPLAINT.

The United States of America,
Northern District of Illinois,
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT.

Central Trust Company
vs.
Central Trust Company of Illinois, William R. Dawes, and Fred A. Busse.

To the Judges of the Circuit Court of the United States of America, for the Northern District of Illinois, Eastern Division.

Complainant, Central Trust Company, a corporation, brings this its bill against the Central Trust Company of Illinois, a corporation, William R. Dawes, cashier of said Central Trust Company of Illinois, and Fred A. Busse, postmaster at Chicago, Illinois, and says:

1. That the matters in dispute in this proceeding exceed, exclusive of interest and costs, the sum of Two Thousand

Dollars ($2000.00), and arise under the constitution and laws of the United States.

2. That this complainant is a resident of the state of South Dakota. That on or about the 17th day of April, 1897, a certificate of incorporation was issued to this complainant by the state of South Dakota by virtue of which certificate this complainant was duly authorized to carry on business, to sue and be sued under the name and title Central Trust Company. That leave was granted by said state to this complainant to establish an office and hold directors meetings in the City of Chicago and state of Illinois.

5 That on or about the 17th day of April, 1897, this complainant established an office in the City of Chicago aforesaid, at the corner of Monroe and LaSalle streets in said city, and began to carry on its business at said place under the name of Central Trust Company, and so continued to do up to and including the 7th day of February, 1903. That on or about the month of August, 1902 this complainant applied to the Secretary of State of the state of Illinois for license to do business within the state of Illinois, and duly complied with all the statutory requiremnts for foreign corporations desiring to do business in said state as laid down by the laws of said state. Your complainant further states that owing to a contest made before the Secretary of State by the defendant herein, Central Trust Company of Illinois, the granting of said license was delayed until the 7th day of February, 1903, at which time license was granted by the State of Illinois to your complainant to do and carry on its said business within the State of Illinois under the name and title Central Trust Company, and that from said date this complainant has continuously conducted its said business in said City of Chicago, at the place aforesaid under said name. That during all of said time this complainant has received through the mails mail matter of great extent addressed to Central Trust Company, the name of your complainant. Your complainant further states that in the regular course of its said business this complainant has and does still continue to receive many letters from firms and individuals doing a banking business, from real estate firms, from trust companies, and from individuals and corporations engaged in various characters of business.

3. Your complainant further states that the defendant, Central Trust Company of Illinois, is a corporation organized under the laws of the State of Illinois, and is en-

gaged in a general banking and trust business, and has its
place of business at number 152 Monroe street in the
6 City of Chicago aforesaid. That a charter was granted
said defendant by the State of Illinois on or about the
month of July, 1902 authorizing it to do business in said state under the name and title Central Trust Company of Illinois. That on or about said time said defendant established its place of business at the corner of Dearborn and Monroe streets in said City of Chicago, and has continued to carry on its said business in said city ever since said time, but that on or about the first of the year 1906 said defendant moved its said place of business from the corner of Dearborn and Monroe streets in said city to number 142 Monroe street in said city, and is now conducting its said business at the last place aforesaid. That from the time of its incorporatioin said defendant has received large quantities of mail through the post office in Chicago aforesaid.

4. Complainant further states that William R. Dawes is, and from the time of its incorporation, has been the cashier of the defendant, Central Trust Company of Illinois, and as such cashier has in the regular course of his duties, and as a part thereof, opened the mail received by the defendant, Central Trust Company of Illinois, or has directed the same to be done by his assistants. That the said William R. Dawes is a citizen of the State of Illinois.

5. Complainant further states that Fred A. Busse is postmaster at Chicago aforesaid, and as such postmaster has charge of the receipt and distribution of all mail received at Chicago, and has charge of the receipt and distribution of all mail received by the complainant and the defendant, Central Trust Company of Illinois. That said Fred A. Busse holds his said office as postmaster under and by virtue of the laws of the United States of America, and under the supervision and direction of the Postmaster General of the United States. That the defendant, Fred A. Busse, has held his said office as postmaster at Chicago since the 16th day of September, 1905, and that he succeeded F. E. Coyne as such postmaster. That the said F. E. Coyne was postmaster at
Chicago from the year 1901 to the 16th day of December,
7 1905. That the defendant, Fred A. Busse, is a citizen of
the State of Illinois.

6. The complainant further represents unto Your Honors that from the year 1897 to the year 1901 inclusive the name of

this complainant, Central Trust Company, appeared in the Lakeside Directory, a book purporting to contain the names and addresses of all persons, natural and artificial, residing in the City of Chicago aforesaid, which said directory is in general circulation in said city, and was during the years aforesaid, and is and was recognized by the people of said city generally, as a reliable and authoritative publication. That said publication was generally known of and used by the people of said city during said years.

7. The complainant further charges that prior to the granting by the State of Illinois of its charter to this defendant, Central Trust Company of Illinois, said defendant, or the promoters of said defendant company, well knew that this complainant was doing business in the City of Chicago aforesaid under the name and title Central Trust Company, and notwithstanding such knowledge made no efforts to have the name of said defendant changed. That the promoters of said company well knew and had information before the granting of said charter that owing to the similarity of the name of the defendant, Central Trust Company of Illinois, to the name of the complainant, Central Trust Company, that confusion would result in the delivery of mail to said companies, but notwithstanding such knowledge the promoters and organizers of said defendant company made no effort to change the name of said defendant.

8. Complainant further represents that the name of this complainant did not appear in the directory above mentioned for the year 1902, but that said omission was due an error by the publishers of said directory, and was no fault of this complainant. But your complainant further states that said directory for the year 1902 was not published and issued to the public until after the promoters and organizers of the defendant, Central Trust Company of Illinois, had filed the articles of incorporation of said defendant company with
8 the Secretary of State of Illinois, and that the choice by said promoters and organizers of said defendant company of the name Central Trust Company of Illinois was in no way due to the omission of this complainants name from said directory for the year 1902.

9. Your complainant further represents that from the time of the establishment by this complainant of its office in Chicago as aforesaid in the year 1897 to the time of the incorporation of the defendant company your complainant

received large quantities of mail through the Chicago post office directed to Central Trust Company, some of said mail being addressed to Chicago, Illinois, generally, and other of said mail having the street address of this complainant on the cover of said mail. That the name Central Trust Company is a valuable asset to this complainant, and many of the correspondents of this complainant have and will continue to address communications to this complainant generally to Chicago, Illinois, without placing the street number on said communications, and this without the solicitation of complainant.

10. Complainant further represents that within a short time after the incorporation of defendant company said defendant company made a request of F. E. Coyne, at that time postmaster at Chicago, that all mail addressed to Central Trust Company, and not having the street address of the complainant on the cover should be delivered to the defendant, Central Trust Company of Illinois. That in accordance with said request, F. E. Coyne, postmaster as aforesaid, directed that all mail addressed Central Trust Company, without the street number of the complainant appearing upon the outside cover should be delivered to the Central Trust Company of Illinois. That said order was made some time in the autumn of 1902, and that from and after the date of said order various letters addressed to Central Trust Company, and intended for this complainant, but having neither the street number of the complainant nor the defendant upon the outside cover, were delivered to the defendant, Central Trust Company of Illinois. That said letters were thereupon opened by the defendant, William R. Dawes, or by his assistants under his orders, and when the same were found to be intended for this complainant said defendant, William R. Dawes, indorsed upon the outside cover of said letters "Not for Central Trust Company of Illinois", or a similar indorsement, and redeposited the same in the mails, and after the delay incident to such proceedure said letters were received by this complainant.

11. Your complainant further states that upon the receipt by it of the letters so addressed to it and so opened as aforesaid, it made a complaint to the post office authorities at the Chicago post office, and made a further complaint to the Postmaster General at Washington, D. C. that letters addressed to it were being delivered to the Central Trust Company of

Illinois. That on the 10th day of January, 1903, the post- Bi
master at Chicago was directed by the Postmaster General of the United States to deliver all mail addressed "Central Trust Co., Chicago, Ill." without the addition of the street, box or other designation to indicate for whom it was intended to the Central Trust Company of Illinois, which direction or order is contained in the following letter, to-wit:

January 10, 1903.

The Postmaster,
Chicago, Ill.

Sir:

I am in receipt of information to the effect that a letter was delivered to Mr. Pfau, a representative of the Central Trust Company of South Dakota, which contained remittances intended to protect checks drawn on the Central Trust Company of Illinois; that Mr. Pfau, instead of returning the letter promptly to the postoffice for delivery to the Trust Company for which it was intended, returned it to the sender, thereby jeopardizing his credit. Mr. Pfau well knew that the deposit was intended for the Central Trust Company of Illinois.

You are hereby directed to deliver mail addressed "Central Trust Co., Chicago, Ill." without the addition of the street, box or other designation to indicate that it is intended for the South Dakota Company, to the Central Trust Company of Illinois, and request that company to return to you promptly for delivery to the Central Trust Company of South Dakota all letters falling into the hands intended for the company represented by Mr. Pfau.

10 Very Respectfully,

(Signed) R. J. Wynne,

First Assistant Postmaster General.

12. Complainant further states that after the receipt of said order the postmaster at Chicago continued to deliver all mail addressed to Central Trust Company and not having the street number thereon, or other indication that it was intended for this complainant, to the Central Trust Company of Illinois. That a great quantity of said mail was intended for this complainant. That said mail was opened by the defendant, William R. Dawes, or by his orders, and such as was intended for this complainant was redeposited in the post office to be delivered to the complainant. Complainant further states that it made various efforts to get the order of the

Postmaster General above set forth rescinded, and to have mail addressed Central Trust Company delivered to it, but that said efforts were without avail, and the Postmaster General declined to rescind said order.

13. Your complainant further represents that letters so addressed to this complainant as aforesaid continued to be delivered to the defendant, Central Trust Company of Illinois, and opened by the defendant, William R. Dawes, up to the 16th day of December, 1906, at which time defendant, Fred A. Busse was appointed postmaster at Chicago and took charge of said post office and the delivery of mail at said place. That it was important to this complainant that much of said mail should reach it promptly and in due course of mail, and that great inconvenience and financial loss resulted to the complainant through the delay in delivery caused as above set forth. That valuable enclosures and business secrets were contained in some of said letters which were jeopardized by the opening of the same by the defendant, as aforesaid.

14. Your complainant further represents that he has requested of the defendant, Fred A. Busse, that all mail addressed to the Central Trust Company be delivered to it,
11 but that said defendant has declined said request, and continues to deliver said mail in accordance with the order of the Postmaster General of the United States under date of January 10th, 1903, heretofore set forth, and does so now deliver said mail. That many letters of this complainant have been received by the defendant, Central Trust Company of Illinois, and opened by the defendant, William R. Dawes, since the 16th of December, 1905, and that by reason thereof great loss and inconvenience has been caused this complainant.

15. Your complainant further states that many letters addressed Central Trust Company, and addressed to the corner of Monroe and LaSalle streets in Chicago, have been delivered by the defendant, Fred A. Busse to the defendant, Central Trust Company of Illinois, and that said letters have been opened by the defendant, William R. Dawes, as aforesaid, and their delivery to this complainant delayed by reason thereof; that the defendant Central Trust Company of Illinois is now claiming all mail directed to Central Trust Company, Chicago, Illinois, and directed to the corner of LaSalle and Monroe Streets in said city, and is endeavoring, as your complainant believes, to have the postmaster at Chi-

cago deliver to it all mail so directed. Complainant further states that the place of business of the defendant, Central Trust Company of Illinois, is not located at the corner of Monroe and LaSalle streets in the City of Chicago, but that the office of this complainant is so located. Bill filed 19

16. The complainant charges that it does an extensive mining, promoting, real estate and trust business, and that said business is increasing, and the amount of mail matter received by this complainant is increasing, and that despite the efforts of complainant to have its correspondents place the street address upon letters addressed to it, many letters will continue to come to the Chicago post office intended for this complainant and addressed Central Trust Company, Chicago, Illinois, or with some such similar address, and without anything on the cover to indicate that it is for this complain-
12 ant other than the name of this complainant, and that many of said letters will contain valuable enclosures and business secrets, the revealing of which to the defendant, Central Trust Company of Illinois, will greatly injure the complainant, and that in the case of some of said letters it will mean great inconvenience and financial loss to the complainant if they are not delivered in due course of post. That defendant, Fred A. Busse is about to continue delivering all mail addressed to Central Trust Company, without the street address of this complainant upon the same, and all mail directed to Central Trust Company, Corner of LaSalle and Monroe Streets, Chicago, Illinois, to the said defendant company, and that the defendant company is about to receive the same, and that the defendant, William R. Dawes, is about to open the same.

17. Your complainant further charges that Postmaster General of the United States, George B. Cortelyou, has not been made a party to this suit for the reason that service of subpoena cannot be had upon him by process of this court.

Forasmuch therefore as the complainant is about to suffer irreparable injury, and is without remedy except in a court of equity, and to the end that the said Central Trust Company of Illinois, William R. Dawes, and Fred A. Busse, who are made defendants to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that the said defendant, Fred A. Busse be restrained by the order and injunction of this Honorable Court from delivering mail addressed Central Trust Company, without the street address

t, int, 2, of this complainant thereon, or some other mark thereon indicating for whom the same is intended, or with the street address, Corner of LaSalle and Monroe Streets, to the defendant, Central Trust Company of Illinois, or directing his clerks, assistants, or mail carriers so to deliver such mail; and restraining by the order and injunction of this Hon-
13 orable Court the Central Trust Company of Illinois from receiving and opening said mail so described, and each and all of its agents and servants from so doing, and also restraining the defendant William R. Dawes from opening any of the mail so described, either as agent of the said Central Trust Company of Illinois or in his individual capacity, and that all of said injunctions be made perpetual; and that your complainant may have such other and further relief in the premises as equity may require and to the court shall seem meet.

May it please the Court to grant a writ of injunction issued out of and under the seal of this Honorable Court perpetually enjoining and restraining the said defendants, Central Trust Company of Illinois and William R. Dawes from receiving and opening mail addressed to this complainant, and the defendant Fred A. Busse from delivering mail addressed to this complainant to the defendant Central Trust Company of Illinois, in accordance with the prayer of this bill.

And your complainant prays that a provisional or preliminary restraining order be issued to the same purport and effect as herein prayed for against said respective defendants, to remain in full force until further order of the court herein or until this suit shall be finally disposed of.

May it please the Court to grant your petitioner not only a writ of injunction conformable to the prayer of the bill herein, but also a writ of supboena issuing out of and under the seal of this court, directed to said Central Trust Company of Illinois, William R. Dawes, and Fred A. Busse commanding them to appear on a day certain and answer unto this bill of complaint, and to abide by and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity.

CENTRAL TRUST COMPANY,
Complainant.
By J. LOUIS PFAU, JR.
President.

McCASKILL & SON,
Counsel for Complainant.

Bill fi 1

14 United States of America
Northern District of Illinois
Eastern Divison.

J. Louis Pfau. Jr., being first duly sworn deposes and says that he is the President of The Central Trust Company, complainant in the bill hereto attached. That he has read the foregoing bill, and knows the contents thereof, and that the same are true.

J. Louis Pfau, Jr.

Subscribed and sworn to before me this 22nd day of June, 1906.

Marshall E. Sampsell,
Clerk U. S. Circuit Court Nor Dist of Ill

(Endorsed) Filed June 22, 1906 Marshall E. Sampsell, Clerk

15 And on the same day to-wit: the twenty-second day of June 1906, a certain Chancery Subpoena issued out of the clerk's office of said Court, directed to the Marshal of said District to execute. Which said Subpoena together with the Memorandum thereto attached and the Marshal's return thereon endorsed is in the words and figures following to-wit: Sub Ju

16 United States of America
Northern District of Illinois, } ss.
Eastern Division.

The United States of America To Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, Greeting:

We Command You and Every of You, That you appear before our Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on the first Monday in the Month of August next, to answer the bill of complaint of Central Trust Company, this day filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois, to Execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this Twenty-second day of June in the year of our Lord one thousand nine hundred and six and of our Independence the 131st year.

MARSHALL E. SAMPSELL,
Clerk.

(Seal)

Memorandum

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago, aforesaid, on or before the day to which this Writ is returnable, the complainant's bill, will be taken against them as confessed, and a decree entered accordingly.

MARSHALL E. SAMPSELL,
Clerk.

17 MARSHAL'S RETURN.

I have served this writ within my district in the following manner to wit:

Upon the within named Central Trust Company of Illinois by reading the same to and within the presence and hearing of Charles G. Dawes, president of the said Company and at the same time delivering to him personally a true copy thereof at Chicago on the 23rd day of June A. D. 1906.

Upon the within named William R. Dawes and Fred A. Busse by reading the same to and within their presence and hearing and at the same time delivering to each of them personally a true copy thereof at Chicago, on the 23rd day of June A. D. 1906.

JOHN C. AMES,
U. S. Marshal,
By WILLIAM F. FOWLER,
Deputy.

(Endorsed) Filed June 26, 1906, Marshall E. Sampsell, Clerk.

18 And on to-wit: the twenty-sixth day of June, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit: Order 190

ORDER OF JUNE 26, 1906,

Denying Motion for Temporary Restraining Order.

Central Trust Co.
vs.
Central Trust Company of Illinois, *et al.* } 28,283

Now come the parties by their solicitors and now comes on to be heard the motion of the complainant for a temporary restraining order and the Court having heard the same and being now fully advised in the premises, overrules and denies said motion.

19 And afterwards to-wit: on the first day of September, 1906, come Central Trust Company of Illinois and William R. Dawes by their solicitors, Messrs. Pam and Hurd and filed in the clerk's office of said court their certain joint and several demurrer to the bill of complaint herein in words and figures following to-wit:

20 DEMURRER OF CENTRAL TRUST CO. OF ILLINOIS AND WILLIAM R. DAWES.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois.

Eastern Division.

Central Trust Company,
vs
Central Trust Company of Illinois,
W. R. Dawes and Fred A. Busse.
} In Chancery. No. 28,283.

The joint and several demurrer of Central Trust Company of Illinois and William R. Dawes, defendants to the bill of complaint herein.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in complainant's bill of complaint, to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and, for causes of demurrer, show that the said complainant has not, in and by its said bill, made or stated such a case as doth or ought to entitled it to any such discovery or relief as is thereby sought, and prayed for, from or against these defendants or any of them.

And for special causes of demurrer, said defendants show to the Court:

First: That the said complainant shows that it has not any equitable standing in this Court and is not entitled to any equitable relief.

Second: That the rights of the complainant were sub-
21 mitted to the Post Office Department and passed upon by that Department, and its conclusions unreversed and in force.

Third: That there is no allegation or showing that any fraud or mistake intervened or existed in the presentation and submission of the matter to the Post Office Department, and the action of that Department thereon.

Wherefore, and for divers other good causes of demurrer

appearing in said bill of complaint, these defendants to demur thereto and pray the judgment of this Honorable Court whether they or either of them shall be compelled to make any further or other answer to the said bill of complaint, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained. Demur Sept

PAM & HURD,
Solicitors for said Defendants.

State of Illinois, } ss.
County of Cook. }

William R. Dawes, being first duly sworn, upon his oath, deposes and says, that he is one of the defendants in the above entitled cause and the Cashier of the defendant, Central Trust Company of Illinois, and makes this affidavit in behalf of both himself and his co-defendant, Central Trust Company of Illinois; that the above and foregoing demurrer is not interposed for the purposes of delay.

WILLIAM R. DAWES.

Subscribed and sworn to before me this first day of September, A. D. 1906.

PAUL A. NEUFFER,
(Seal) *Notary Public, Cook County, Illinois.*

22 I, Max Pam, Do Hereby Certify, that I am one of the solicitors for the defendants, William R. Dawes and Central Trust Company of Illinois, in the above entitled cause, and in my opinion, the above and foregoing demurrer is well founded in point of law.

MAX PAM.

(Endorsed) Filed Sep. 1, 1906, Marshall E. Sampsell, Clerk.

23 And afterwards to-wit: on the sixteenth day of October, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

16, ORDER OF OCTOBER 16, 1906,

Demurrer Taken Under Advisement.

Central Trust Company,
vs.
Central Trust Company of Illinois,
et al.
} 28283

Now come the parties by their solicitors, and now comes on to be heard the joint and several demurrer to the bill of complaint herein and the Court having heard the arguments of counsel to conclusion and not being sufficiently advised in the premises, takes time to consider.

Fred ed 06. 24 And on to-wit: the seventeenth day of October, 1906, come Fred A. Busse by his solicitor Mr. Edwin W. Sims and by leave of court first had and obtained filed in the clerk's office of said Court his certain demurrer in words and figures following to-wit:

DEMURRER OF FRED A. BUSSE.

United States of America,
Northern District of Illinois,
Eastern Division.
} ss.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Central Trust Company,
vs.
Central Trust Company of Illinois,
et al.
}

The several demurrer of Fred A. Busse, Postmaster at Chicago, one of the defendants in the above entitled cause.

This defendant, by leave of Court first had and obtained, by protestation, not confessing or acknowledging all or any of the matters and things in complainant's bill of complaint to be true, in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for causes of demurrer, shows that the said complainant has not in and

by its said bill, made or stated such a case as doth or ought to entitled it to any such discovery or relief as is thereby sought, and prayed for, from or against this defendant.

And for special causes of demurrer, this defendant shows to the Court.

25 First: That the said complainant shows that it has not any equitable standing in this court, and is not entitled to any equitable relief.

Second: That the rights of the complainant were submitted to the Post Office Department, and passed upon by that Department, and its conclusions unreversed and in force.

Third. That there is no allegation or showing that any fraud or mistake in the presentation and submission of the matter to the Post Office Department, and the action of that Department thereon.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur thereto, and prays the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill of complaint, and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWIN W. SIMS,
Solicitors for said Defendant.

State of Illinois, }
County of Cook, } ss.

John M. Hubbard, being first duly sworn, upon his oath, deposes and says, that he is the duly authorized agent in this behalf of Frederick A. Busse, Postmaster at Chicago, and makes this affidavit in his behalf; that the above and foregoing demurrer is not interposed for the purposes of delay.

JNO. M. HUBBARD,
Asst. Postmaster.

26 Subscribed and sworn to before me this 17th day of October, A. D. 1906.

B. E. DUPPLER,
(Seal) *Notary Public, Cook County, Illinois.*

I, Edwin W. Simms, do hereby certify, that I am the solicitor for Frederick A. Busse, Postmaster at Chicago, defendant in the above entitled cause, and in my opinion, the above and foregoing demurrer is well founded in point of law.

EDWIN W. SIMS.

(Endorsed) Filed Oct., 17, 1906, Marshall E. Sampsell, Clerk.

27 And on to-wit: the seventeenth day of October, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entit'ed cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry, to-wit:

28 CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois

Eastern Division

Wednesday, October 17th, 1906.

Present:

Honorable Christian C. Kohlsaat, Circuit Judge.

Central Trust Company,
vs
Central Trust Co. of Illinois, William R. Dawes, and Fred A. Busse. } No. 28283.

This cause coming on for further hearing, counsel for the respective parties being present, the complainant being represented by Messrs. McCaskill & Son, the defendant Fred A. Busse, by the United States Attorney, the defendants The Central Trust Company of Illinois and William R. Dawes, by Messrs. Pam & Hurd, and thereupon leave is given said defendant Fred A. Busse to withdraw his answer herein and file instanter a demurrer to said bill.

And the Court having considered the joint and several demurrers of said defendants Central Trust Company of Illinois and William R. Dawes, and the separate demurrer of said defendant Fred A. Busse and being now fully advised

in the premises finds that said bill is without equity and that said demurrers should be sustained. And said complainant being ruled to amend its bill instanter, elects to stand by its pleading.

It is thereupon ordered, adjudged and decreed, that said demurrers be and they and each of them are hereby sustained, and said bill of complaint be and the same is hereby dismissed as to all of said defendants for want of equity, that said defendants have and recover of the complainant their costs herein to be taxed, and that execution issue therefor, and that the complainant pay its own costs.

And the complainant objecting to the finding and judgment of the court enters its motion for an appeal to the United States Circuit Court of Appeals for this circuit, and the court fixes the penalty of the appeal bond in the sum of $300; said appeal to be allowed upon the complainant filing its assignment of errors as provided by the statute.

And afterwards to-wit: on the twenty-second day of November, 1906, come the complainant in said entitled cause by its solicitors and filed in the clerk's office of said Court its certain petition for appeal in words and figures following to-wit:

PETITION FOR APPEAL.

The United States of America,
Northern District of Illinois } ss.
Eastern Division,

IN THE UNITED STATES CIRCUIT COURT,

Central Trust Company,
vs.
Central Trust Company of Illinois, William R. Dawes and Fred A. Busse,

In Chancery.
No. 28283

To the Honorable Christian C. Kohlsaat, Circuit Judge.

The complainant, Central Trust Company, comes and prays this Honorable Court for an appeal from the decree entered by this Honorable Court on the 17th day of October, A. D. 1906, sustaining the joint and several demurrers of the de-

fendants herein, and dismissing complainants' bill of complaint for want of equity, and entering judgment against complainant for costs of suit.

McCaskill & Son.

By McCaskill & Son,
its solicitors.

(Endorsed) Filed Nov., 22, 1906, Marshall E. Sampsell, Clerk.

31 And on the same day to-wit: the twenty-second day of November, 1906, come the complainant in said entitled cause by its solicitors and filed in the clerk's office of said Court its certain assignment of errors in words and figures following to-wit:

32

ASSIGNMENT OF ERRORS.

In the Circuit Court of the United States
For the Northern District of Illinois,
Eastern Division.

Central Trust Company
vs.
Central Trust Company of Illinois, William R. Dawes and Fred A. Busse. } No. 28283.

Assignment of Errors.

Now on this 22nd day of November, 1906, came the said complainant, by McCaskill & Son, its solicitors, and says that the decree in said cause is erroneous and against the just rights of this complainant, and that the court erred

1—In decreeing—

"That said demurrers be and they and each of them are hereby sustained, and said bill of complaint be and the same is hereby dismissed as to all of said defendants for want of equity, and that said defendants have and recover of the complainant their costs herein to be taxed, and that execution issue therefor, and that the complainant pay its own costs."

2—In not decreeing

That the defendant, Fred A. Busse, be enjoined from delivering to the defendant, Central Trust Company of Illinois,

and the defendants, Central Trust Company of Illinois and William R. Dawes, be enjoined from opening mail addressed to the Central Trust Company, Chicago, Illinois.

3—In not decreeing.

That the defendant, Fred A. Busse, be enjoined from delivering to the defendant, Central Trust Company of Il-
33 linois, and the defendants, Central Trust Company of Illinois and Wil iam R. Dawes, be enjoined from opening mail addressed "Central Trust Company, Corner of Monroe and LaSalle Streets Chicago, Illinois."

4—In not decreeing

That the demurrers of the defendants, and of each of them, be overruled.

5—In not decreeing

That the defendants, and each of them, answer complainant's bill of complaint within a fixed time.

Wherefore the complainant prays that said decree be reversed and that said court be directed to enter an order requiring the defendants herein to answer complainant's bill of complaint within a fixed time, and upon their default therein to decree that the defendant, Fred A. Busse, be enjoined from delivering any mail addressed to the Central Trust Company, at Chicago generally, or at the street address, Corner of Monroe and LaSalle Streets, to the defendant, Central Trust Company of Illinois, and that the defendants Central Trust Company of Illinois and William R. Dawes, be enjoined from opening any mail so addressed.

McCaskill & Son.
Solicitors for Complainant.

(Endorsed) Filed Nov. 22, 1906, Marshall E. Sampsell, Clerk.

34 And on the same day to-wit: the twenty-second day of November, 1906, come the Central Trust Company and filed in the Clerk's office of said Court its certain Bond on Appeal in words and figures following to-wit:

35 Know all Men by these Presents, That we Central Trust Company, as principal, and Lenore P. Heckard and Florence P. Kirchner, as sureties, are held and firmly bound unto Central Trust Company of Illinois William R. Dawes and Fred A. Busse, in the full and just sum of three hundred dollars to be paid to the said Central Trust Company of Illi-

nois, William R. Dawes and Fred A. Busse, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty-second day of November, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court, between Central Trust Company, complainant, and Central Trust Company of Illinois, William R. Dawes and Fred A. Busse defendants a decree was rendered against the said Central Trust Company, and the said Central Trust Company, having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree of the aforesaid suit, and a citation directed to the said Central Trust Company of Illinois, William R. Dawes and Fred A. Busse citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Central Trust Company, shall prosecute its said appeal to effect, and shall answer all damages and costs that may be awarded against it if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

CENTRAL TRUST COMPANY
J. LOUIS PFAU, (Seal)
President.
LENORE P. HECKARD, (Seal)
FLORENCE P. KIRCHNER. (Seal)

Sealed and delivered in presence of—

.....

.....

.....

Approved by—
Nov., 22, /06,
KOHLSAAT, *J.*

(Endorsed) Filed Nov., 22, 1906, Marshall E. Sampsell, Clerk.

36 And on the same day to-wit: the twenty second day of November, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit: Orde 19

ORDER OF NOVEMBER 22, 1906, ALLOWING APPEAL AND APPROVING BOND.

Central Trust Company,
vs.
Central Trust Company of Illinois, *et al.* } Chancery. 28283.

Now comes the complainant by its solicitor and presents its petition for appeal, assignments of error and bond on appeal, which is approved by the Court; and thereupon it is ordered that said appeal be, and the same is, hereby allowed to have reviewed in the Unoted States Circuit Court of Appeals for this circuit the decree, heretofore entered herein, and that a citation issued returnable within thirty days from this date.

37 PRAECIPE FOR RECORD. Pra fil 15

IN THE CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois

Eastern Division.

Central Trust Company,
vs.
Central Trust Company of Illinois William R. Dawes and Fred A. Busse, } 28,283

To the Clerk of the above entitled Court:—

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit, under the appeal heretofore perfected to said Court and in-

clue in the said transcript the following pleadings, proceedings and papers on file to-wit:

Bill of Complaint filed June 22, 1906.

Chancery Subpoena and return thereon endorsed.

Order of June 26, 1906, denying restraining order.

Demurrer of Central Trust Company of Illinois and Wm. R. Dawes.

Order of October 16, 1906, Demurrer of Central Trust Co., of Illinois and William R. Dawes taken under advisement.

Demurrer of Fred A. Busse filed Oct., 17, 1906.

Decree entered October 17, 1906.

Petition for Appeal filed Nov., 22, 1906,

Assignment of Errors filed Nov. 22, 1906.

Bond on Appeal filed Nov. 22, 1906,

Order of Nov., 22, approving bond etc.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the seventh Circuit and on file in the office of the clerk of the said Circuit Court of Appeals at Chicago, before Dec. 23, 1906.

McCaskill & Son,
Solicitors for Appellant.

(Endorsed) Filed Nov., 22, 1906, Marshall E. Sampsell, Clerk.

38 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court, made in accordance with Stipulation filed in the cause entitled Central Trust Company vs. Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, General Number 28,283 as the same appear from the original Records and files of said cause now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 23rd day of November A. D. 1906.

Marshall E. Sampsell
Clerk.

(Seal)

39 United States of America. } ss.

The President of the United States, To Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an Order allowing an appeal entered and filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, wherein Central Trust Company is the appellant, and you are Appellees, to show cause, if any there be, why the Decree rendered against the said Appellant as in the said Petition mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, Judge of the Circuit Court of the United States, this 22nd day of November, in the year of our Lord one thousand nine hundred and six.

KOHLSAAT, *J.*

Service of within writ accepted for defendant, Fred A. Busse, this 22nd day of November, 1906.

EDWIN W. SIMS,
U. S. Attorney.

Service of the within citation is hereby accepted on behalf of Central Trust Company of Illinois and William R. Dawes this 22nd day of November 1906

PAM & HURD
Attys for said appellees

(Endorsed) Citation. Filed Nov 22 1906 Marshall E. Sampsell, Clerk.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 25, inclusive, contain a true copy of the printed record filed in this court on the first day of December, 1906, which was prepared for the printer, supervised, indexed and distributed by me in accordance with the rules of this court and upon which the cause was heard and determined by the *the* United States Circuit Court of Appeals for the Seventh Circuit in the case of Central Trust Company, *vs.* Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, No. 1334, October Term, 1906, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Twelfth day of February A. D. 1908.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held at the United States Court Rooms, in the City of Chicago in said Seventh Circuit, on the second day of October, 1906, of the October term in the year of our Lord one thousand nine hundred and six and of our Independence the one hundred and thirtieth.

And afterwards, to-wit: on the twenty-third day of November, 1906, in the October term last aforesaid, came the appellant, by its counsel Mr. Daniel McCaskill, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit.

No. 1344, October Term, 1906.

CENTRAL TRUST COMPANY, Appellant,
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

The Clerk will enter my appearance as Counsel for the Appellant.
DANIEL McCASKILL.

Endorsed: Filed Nov. 23, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fourth day of December, 1906, in the October term last aforesaid, came the appellees by their counsel Mr. Max Pam, Harry B. Hurd and Hugo Pam, and filed their appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit.

No. 1344, October Term, 1906.

CENTRAL TRUST COMPANY, Appellant,
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

The Clerk will enter our appearance as Counsel for the Appellees Central Trust Company of Illinois and William R. Dawes.

MAX PAM.
HARRY B. HURD.
HUGO PAM.

Endorsed: Filed Dec. 4, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the twenty-sixth day of December, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, *State of Illinois, ss:*

In the United States Circuit Court of Appeals in and for the Seventh Circuit.

CENTRAL TRUST COMPANY, Appellant,
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE, Postmaster, Appellees.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective solicitors, that the appellees in said cause have to and including the 20th day of January, A. D. 1907, within which time to file briefs in behalf of said appellees in said cause.

DANIEL McCASKILL,
O. L. McCASKILL,
Solicit-rs for Appellant.
MAX PAM,
HARRY B. HURD,
HUGO PAM,
Solicitors for Appellees.

Endorsed: Filed Dec. 26, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the second day of January, 1907, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

WEDNESDAY, *January* 2, 1907.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. Christian C. Kohlsaat, Circuit Judge. Edward M. Holloway, Clerk. Luman T. Hoy, Marshal.

1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that this cause, be, and the same is hereby set down for hearing January 29, 1907.

And afterwards, to-wit: On the sixteenth day of January, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation of counsel is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Seventh Circuit, State of Illinois, ss:

United States Circuit Court of Appeals, Seventh Circuit.

No. 1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS ET AL.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective solicitors, that the appellees in said cause have to and including the 21st day of January, A. D. 1907, within which time to file their briefs.

McCASKILL & SON,
Solicitors for Appellant.
MAX PAM,
HARRY B. HURD,
HUGO PAM,
Solicitors for Appellees.

Endorsed: Filed Jan. 16, 1907. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the twenty-ninth day of January, 1907, in the October term last aforesaid the following further proceedings were had and entered of record, to-wit:

MONDAY, *January* 29, 1907.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge. Hon. Christian C. Kohlsaat, Circuit Judge. Edward M. Holloway, Clerk. Luman T. Hoy, Marshal.

Before Hon. Peter S. Grosscup, Circuit Judge. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. Daniel McCaskill and Mr. O. L. McCaskill, counsel for appellant, Mr. Hugo Pam, counsel for appellee present and submitting on briefs, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the second day of February, 1907, in the October term last aforesaid, came the appellant, by its counsel Mr. O. L. McCaskill, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit.

No. 1344, October Term, 1906.

CENTRAL TRUST COMPANY, Appellant,
vs.
CENTRAL TRUST COMPANY OF ILLINOIS ET AL.

The Clerk will enter my appearance as Counsel for the appellant.
O. L. McCASKILL.

Endorsed: Filed Feb. 2, 1907. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fifth day of February, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled cause, said opinion being in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1344, October Term, 1906, January Session, 1907.

CENTRAL TRUST COMPANY, Appellant,
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Before Grosscup, Baker and Seaman, Circuit Judges.

Per Curiam: From our affirming the decree without repeating or enlarging upon the views orally expressed at the argument, the parties must not infer that we sanction the delivery to the appellee company of mail so specifically addressed to appellant's business rooms that no doubt can exist as to the identity of the addressee. Appellant's bill, in our opinion, is bottomed on its asserted right to have delivered to it all mail addressed "Central Trust Company, Chicago, Illinois." There is no allegation of the postmaster's refusal to deliver to appellant the mail specifically addressed to its business rooms. An injunction should not issue on the bare fact that such mail may inadvertently have been delivered to the appellee company. In such instances the appellee company should at once return that mail unopened to the postmaster for prompt delivery to appellant.

The decree is affirmed.

And afterwards, on the same day, to-wit: On the fifth day of February, 1907, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *February* 5, 1907.

Court met pursuant to adjournment, and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge. Edward M. Holloway, Clerk. Luman T. Hoy, Marshal.

1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause, be, and the same is hereby affirmed with costs.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms in the City of Chicago in said Seventh Circuit on the first day of October, 1907, of the October term in the year of our Lord one thousand nine hundred and seven and of our Independence the one hundred and thirty-second.

And afterwards, to-wit: On the fourth day of February, 1907, in the October term last aforesaid, came the Central Trust Company by *by* its counsel Mr. Daniel McCaskill and Mr. O. L. McCaskill, and filed in the office of the clerk of this court its petition for appeal, Assignment of Errors and Bond on Appeal, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit
October Term, A. D. 1906.

No. 1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

Petition for an Appeal to the Supreme Court of the United States.

The above named appellant respectfully shows onto Your Honors that the above entitled cause is pending in the United States Circuit Court of Appeals for the Seventh District. That on the 5th day of February, A. D. 1907 the court entered its decree in said cause affirming the decree of the United States Circuit Court for the Northern District of Illinois. That the matters here in controversy involve

an amount to exceed One Thousand Dollars ($1000) besides costs of suit. That the Jurisdiction of none of the different courts mentioned herein depended upon a diversity of citizenship of said parties thereto, that it does not arise under the patent, revenue or criminal laws of the United States and that it is not an admiralty case, but that said cause is a proper one to be reviewed by the *Superior* Court of the United States on appeal.

Wherefore appellant prays that an appeal be allowed to it and that the clerk of the United States Court of Appeals for the Seventh Circuit be directed to send a record of the proceeding in said cause together with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herewith filed by appellant may be reviewed, and if errors be found, corrected according to the laws and customs of the United States.

DANIEL McCASKILL,
O. L. McCASKILL,
McCASKILL & SON,
Solicitors for Appellant.

Notice that the above petition would be presented to this Court upon the 3rd day of February 1908 has been given us this 1 day of February, 1908.

——— ———,
——— ———,
Solicitors for Central Trust Company and William R. Dawes.

Appeal allowed.
WM. H. SEAMAN, Circuit Judge.

Endorsed: Filed Feb. 4, 1908. Edward M. Holloway, Clerk.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1906.

Number 1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

Assignment of Errors.

The Appellant in the above cause, Central Trust Company, in connection with its petition for appeal herein presents and files its assignment of errors, as to which matters and things it says that the decree entered herein affirming the decree of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, is erroneous, to-wit:

First. The Court erred in affirming the decree of said Circuit Court of the United States, which decreed that the demurrers filed to appellant's bill of complaint be and the same are hereby dismissed as to all of said defendants for want of equity, and that said defendants have and recover of the complainant their costs herein to be taxed, and that execution issue therefor, and said complainant pay its own costs.

Second. The Court erred in not reversing said decree of the Circuit Court aforesaid, and in not decreeing in lieu thereof that the defendant, Fred A. Busse, be enjoined from delivering to the defendant, Central Trust Company of Illinois, and the defendants Central Trust Company of Illinois and William R. Dawes, be enjoined from opening mail addressed to the Central Trust Company, Chicago, Illinois.

Third. The Court erred in not decreeing that mail addressed to Central Trust Company, Corner of Monroe and La Salle Streets, Chicago, Illinois, be delivered to appellant, and that appellee, Fred A. Busse, be enjoined from delivering, and appellees, William R. Dawes and Central Trust Company of Illinois be enjoined from opening mail so addressed, when the same should be delivered to Central Trust Company of Illinois.

Fourth. The court erred in decreeing that only such mail as was addressed to Central Trust Company with the address of appellant's business rooms thereon should be delivered to appellant.

Fifth. The Court erred in amending its decree and opinion filed in this cause by changing the following language in the original opinion and decree: "the delivery of mail addressed Central Trust Company, Corner of Monroe and La Salle Streets, Chicago, Illinois to the Appellee Company," to "The delivery to the appellee Company of mail so specifically addressed to appellant's business rooms that no doubt can exist as to the identity of the addressee," as contained in the amended opinion and decree subsequently filed.

Sixth. The Court erred in not decreeing that appellees, and each of them, answer appellant's bill of complaint within a fixed time.

Seventh. The Court erred in not decreeing that the demurrers of appellees, and each of them, be overruled.

Wherefore appellant prays that the said decree may be reversed and that appellant may have an adjudication and decree in its favor as herein specified.

DANIEL McCASKILL,
O. L. McCASKILL,
Solicitors for Central Trust Company.

Endorsed: Filed Feb. 4, 1908. Edward M. Holloway, Clerk.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1906.

No. 1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE.

Know all men by these presents that Central Trust Company, a corporation, as principal, and Lenore P. Heckard and Florence P. Kirchener, as sureties, are held and firmly bound unto Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, in the sum of Two Hundred Dollars ($200.00) to be paid unto said Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, and we bind ourselves and each of us, our heirs executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 30th day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, the appellant in the above entitled cause has presented its prayer for appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Seventh Circuit on February 5th, A. D. 1907.

Now therefore the condition of this obligation is such that if said appellant shall prosecute said appeal with effect and answer all damages and costs if it fail to make said appeal good, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] CENTRAL TRUST COMPANY,
By J. LOUIS PAUF, *President.*
FLORENCE A. KIRCHNER. [SEAL.]
LENORE P. HECKARD. [SEAL.]

The above bond is satisfactory to us.

——— ———,
——— ———,
Att'ys for Central Trust Co. of Ill., Wm. R. Dawes and ———, ———.

Approved
WM. H. SEAMAN, *Judge.*

Endorsed: Filed Feb. 4, 1908. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourth day of February, 1908, in the October term last aforesaid, there was filed in the office of the clerk of this court Sureties Obligation and Affidavit of property owned, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1908.

No. 1311.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES, and FRED A. BUSSE.

We hereby enter ourselves as security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this Court; and in default of payment by the Central Trust Company of any costs ordered or adjudged to be paid by it hereby agree and stipulate that execution may issue against our property for all costs not exceeding two hundred dollars taxed against said Central Trust Company, dated this 30th day of January, A. D. 1908.

FLORENCE A. KIRCHNER. [SEAL.]
Residence 1319 *Foster Avenue.*
LENORE P. HECKARD. [SEAL.]
Residence 2505 *Magnolia Ave.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, O. L. McCaskill, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that Florence A. Kirchner and Lenore P. Heckard personally known to me to be the same parties who have attached their hands and seals to the foregoing obligation — this day here before me in person and acknowledged that they signed and sealed said foregoing instrument hereto attached for the uses and purposes therein contained on the 30th day of January, 1908.

Given in my hand and Notarial Seal this 30th day of January A. D. 1908.

[SEAL.] O. L. McCASKILL,
Notary Public.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1908.

Lenore P. Heckard, a surety on the annexed security for costs, being duly sworn on — oath deposes and says that she is a resident of said District and is the owner in fee simple of certain real estate in said District free and clear of all liens, encumbrances and exemptions of the value of to exceed four thousand dollars, and that said real property stands of record in her name and is particularly described as follows, to-wit: Lot 4 in Block 11 in Iron Workers Addition to

South Chicago in the South One Half of Section 8, Township 37 Range 15 East of the Third Principal Meridian in Cook County, Illinois.

And further deponent saith not.

LENORE P. HECKARD.

Subscribed and sworn to before me this 30th day of January, 1908.

O. L. McCASKILL.
Notary Public.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1906.

Florence A. Kirchner, a surety on the annexed security for costs, being duly sworn on — oath deposes and says that -he is a resident of said District and is the owner in fee simple of certain real estate in said District free and clear of all liens, encumbrances and exemptions of the value of to exceed one thousand dollars, and that said real property stands of record in her name and is particularly described as follows, to-wit: Lots 20 and 21, block 35, Subdivision of Section 18, 19 and 20, Township 37, Range 14 East of the third principal Meridian, known as Washington Heights, being 100 x 200 feet north front on Grove Street, 300 feet East of Chicago And Rock Island Railroad in the center of Morgan Park, being unoccupied and unimproved property.

And further deponent saith not.

FLORENCE A. KIRCHNER.

Subscribed and sworn to before me this 30th day of January, 1908.
[SEAL.] O. L. McCASKILL.
Notary Public.

Endorsed: Filed Feb. 4, 1908. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourth day of February, 1908, in the October term last aforesaid, the following further proceedings were had and entered of record to-wit:

TUESDAY, *February* 4, 1908.

Court met pursuant to adjournment, and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge, presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge. Hon. Christian C. Kohlsaat, Circuit Judge.

Before Hon. William H. Seaman, Circuit Judge.

1344.

CENTRAL TRUST COMPANY
vs.
CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES, and FRED A. BUSSE.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered that an appeal in this cause to the Supreme Court of the United States be and is hereby allowed.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 17, inclusive, contain a true copy of the papers filed (except briefs of counsel) and proceedings had thereon in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Central Trust Company, *vs.* Central Trust Company of Illinois, William R. Dawes and Fred A. Busse, No. 1344, October Term, 1906, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twelfth day of February A. D. 1908.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

UNITED STATES OF AMERICA, *ss:*

To Central Trust Company of Illinois, William R. Dawes, and Fred A. Busse, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the Circuit Court of Appeals of the United States for the Seventh Circuit wherein Central Trust Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said decree mentioned,

should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William H. Seaman, United States Circuit Judge sitting as judge for the United States Circuit Court of Appeals for the Seventh Circuit this Fourth day of February, in the year of our Lord one thousand nine hundred and eight.

WM. H. SEAMAN, *Judge.*

[Endorsed:] No. ——. Supreme Court of the United States. Central Trust Company *vs.* Central Trust Company of Illinois, *et al.* Citation to the Supreme Court of the United States.

[Endorsed:] Service of the within citation accepted by us on behalf of Central Trust Company of Illinois and William R. Dawes this — day of February, A. D. 1908. —— ——, Solicitors for Central Trust Company of Illinois and William R. Dawes. Service of the within citation accepted by me on behalf of Fred A. Busse this 5th day of February, 1908. Edwin N. Sims, U. S. Att'y, by Wm. A. Small, Chief Clerk. Filed Feb. 5, 1908. Edward M. Holloway, Clerk.

On this Fifth day of February, in the year of our Lord one thousand nine hundred eight, personally appeared O. L. McCaskill before me, the subscriber, and makes oath that he delivered a true copy of the within citation to William R. Dawes, as Cashier of Central Trust Company of Illinois, William R. Dawes, personally.

O. L. McCASKILL.

Sworn to and subscribed the 5th day of February A. D. 1908.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: File No. 21,045. U. S. circuit court of appeals, 7th circuit. Term No. 642. Central Trust Company, appellant, *vs.* Central Trust Company of Illinois, William R. Dawes, and Fred A. Busse. Filed February 27th, 1908. File No. 21,045.

No. 642 88.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1907.

CENTRAL TRUST COMPANY,
Appellant,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES AND FRED A. BUSSE,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF APPELLANT.

W. H. SEARS,
SOLICITOR FOR APPELLANT.

DANIEL MCCASKILL AND
O. L. MCCASKILL,
OF COUNSEL.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1907.

NO 642.

CENTRAL TRUST COMPANY,

Appellant,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES AND FRED A. BUSSE,

Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

This is a proceeding to determine to whom the postmaster at Chicago, Illinois, shall deliver mail addressed "Central Trust Company, Chicago, Illinois," and also mail addressed "Central Trust Company, Corner of La Salle and Monroe Streets, Chicago, Illinois." The mail is claimed by Central Trust Company, the appellant, and by Central Trust Company of Illinois, one of the appellees.

The question is raised by appellee's demurrer to appellant's bill of complaint seeking to enjoin the postmaster, Fred A. Busse, one of the appellees, from delivering mail so addressed to the appellee, Central Trust Company of Illinois, and the appellees, Central Trust Company of Illinois and William R. Dawes, from opening the mail so addressed.

The bill alleges that appellant is a corporation organized under the laws of South Dakota. That on the 17th day of April, 1897, by virtue of its charter, it opened an office in the City of Chicago at the corner of Monroe and La Salle streets, and from the time of the establishment of its said office as aforesaid until in the autumn of the year 1902 it received through the postoffice at Chicago large quantities of mail matter addressed to it by its own proper name, Central Trust Company. That some of said mail was addressed to Chicago generally, without any street address, and other of said mail had the street address of appellant upon the outside cover of said mail. That from the time of the establishment of its said office up to and including the year 1901 the name of appellant as aforesaid appeared in the public directory of the City of Chicago. That owing to an error of the publishers of said directory appellant's name did not appear in the directory for 1902, but that the directory for the year last aforesaid was not issued to the public until after the promoters of the Central Trust Company of Illinois had applied for a charter for said company under said name, and that the omission of appellant's name from the directory for said year in no way affected

the choice by the promoters of the Central Trust Company of Illinois of said name for said corporation. That the promoters of said last named company were well aware of the existence in the City of Chicago of appellant company and knew that because of the similarity in names of the proposed company and of appellant confusion in the mail of said companies would likely result, and that this knowledge was acquired before the incorporation of the Central Trust Company of Illinois. But that despite such knowledge by said promoters no effort was made to change the name of the Central Trust Company of Illinois.

The bill further charges that in the month of August, 1902, appellant company applied to the Secretary of State of Illinois for a license to do business in the State of Illinois, but that owing to a contest made by the Central Trust Company of Illinois said license was not granted until the 7th day of February, 1903.

It is further charged that the Central Trust Company of Illinois was incorporated under the laws of the State of Illinois in the month of July, 1902, and established its office in the City of Chicago at the corner of Dearborn and Monroe streets, and there engaged in a general banking and trust business. That in the month of January, 1906, said company moved its place to number 142 Monroe street in said city. That some time in the autumn of 1902 said Central Trust Company of Illinois requested the postmaster at Chicago to deliver to it all mail addressed "Central Trust Company" not having the street number of appellant upon the outside cover.

and that forthwith the postmaster acceded to said request and delivered all mail so addressed to the Central Trust Company of Illinois. That said mail when so delivered was opened by the appellee, William R. Dawes, an officer of the Central Trust Company of Illinois, and when found to be for this appellant was redeposited in the mail with the indorsement, "not for Central Trust Company of Illinois," and after the delay incident to such process duly reached this appellant. That thereupon this appellant complained to the postal authorities both in Chicago and Washington that its mail was being delivered to the Central Trust Company of Illinois. That on the 10th day of January, 1903, the Postmaster general wrote a letter to the postmaster at Chicago stating that a representative of the appellant company, Mr. Pfau, had opened a letter intended for the Central Trust Company of Illinois which contained remittances to cover checks drawn on the Central Trust Company of Illinois, and that instead of depositing it in the mail for the Central Trust Company of Illinois Mr. Pfau had returned the letter and remittances to the sender, thereby jepardizing his credit, and therefore directed the postmaster at Chicago to deliver all mail addressed "Central Trust Company, Chicago, Ill." without the addition of the street, box or other designation to indicate that it was intended for appellant, to the Central Trust Company of Illinois. That after the receipt of said order the postmaster at Chicago continued to deliver all mail addressed "Central Trust Company" without the street number of the appellant thereon to the Central Trust Company of Illinois. That appellant made various efforts to have said

order rescinded, but without avail. That much of the mail so delivered to the Central Trust Company of Illinois was intended for the appellant, and by the opening of the same as aforesaid its business secrets were revealed and much financial loss resulted to appellant. This practice continued up to the filing of appellant's bill, it was alleged, and it was important to appellant's business that its mail reach it in due course of post.

The bill further charges that said postmaster has delivered mail addressed "Central Trust Company, Corner of Monroe and La Salle Streets, Chicago, Illinois," to the Central Trust Company of Illinois and that said mail has been opened by said last named company, or by William R. Dawes, and then re-deposited in the mail for appellant, and that said Central Trust Company of Illinois is claiming and endeavoring to have all mail so addressed delivered to it, and that said postmaster is about to deliver all such mail to the Central Trust Company of Illinois, although the corner of Monroe and La Salle streets is the street address of appellant and is not the street address of the Central Trust Company of Illinois.

The bill charges that the amount involved exceeds Two Thousand Dollars ($2,000) exclusive of costs and interest, and that the issues arise under the laws and constitution of the United States, and the appellant is without remedy except in equity. It prays that Fred A. Busse, postmaster at Chicago, to be enjoined from delivering mail addressed "Central Trust Company, Corner of Monroe and La Salle Streets, Chicago, Illinois," or "Central Trust

Company'' without the street address of appellant thereon or anything to indicate for whom the same is intended, to the Central Trust Company of Illinois, and that the Central Trust Company of Illinois and William R. Dawes be enjoined from opening the mail so addressed, and for general relief.

To this bill appellee, Fred A. Busse, postmaster, filed a general demurrer, and the appellees, Central Trust Company of Illinois and William R. Dawes, filed their joint and several general and special demurrers, and for special demurrer set forth that this controversy was submitted to the Postmaster General and that his determination thereon remains in full force and effect. That there is no showing that said determination was the result of fraud or mistake.

All of said demurrers were sustained by the Honorable Judge Kohlsaat, judge of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, and said bill was dismissed for want of equity, to which action of the court in dismissing its bill and in refusing the relief therein appellant duly excepted, elected to stand by its bill and prosecuted its appeal to the United States Circuit Court of Appeals for the Seventh Circuit, which court affirmed the decree of the Circuit Court in all respects. From the decision of the Court of Appeals this appeal is prosecuted.

ERRORS RELIED UPON.

1. The Circuit Court of Appeals erred in affirming the decree of the Circuit Court.

2. The Circuit Court of Appeals erred in not reversing the decree of the Circuit Court and directing said court to overrule the demurrers filed to complainant's bill.

BRIEF OF ARGUMENT.

The following propositions will be argued:

First. An order of the postmaster general that mail be delivered to a corporation other than the addressee is reviewable by the courts, if the complaining party has a clear legal right to such mail.

Second. The appellant has a legal right to all mail addressed to it.

Third. Priority of incorporation at a post office does not give a corporation of similar name the right to the mail of the addressee.

Fourth. The foreign corporation act of Illinois does not deprive a foreign corporation of the right to its mail because of a failure to file its charter with the secretary of state.

I.

THE DECISION OF THE POSTMASTER GENERAL GIVING THE MAIL IN CONTROVERSY TO THE CENTRAL TRUST COMPANY OF ILLINOIS IS REVIEWABLE BY THIS COURT.

A. Because his act was ministerial in character.

B. Because he acted beyond the scope of his authority.

A. A distinction has been drawn between official and ministerial acts in determining when a head of a department may be compelled to perform a plain legal duty. If the act is official, requiring the exercise of judgment and discretion, his decisions are final and not reviewable by the courts. If, on the other hand, it is ministerial in character, he may be compelled to perform it.

> *Kendall* v. *United States*, 12 Peters, 524, 614.
>
> *New Orleans Nat'l Bank* v. *Merchant*, 18 Fed. Rep., 841, 850.
>
> *Teal* v. *Fenton*, 12 Howard, 284, 291.

This obligation is recognized in the postal regulations, and provision is made for complying with the decrees of court concerning the delivery of mail.

> Postal Laws and Regulations of 1902, Section 653, page 313.

In *Mississippi* v. *Johnson*, 4 Wallace, 475, on page 488, a ministerial duty is thus defined:

> "A ministerial duty, the performance of which may, in proper cases, be required of the head of a department by judicial process, is one in respect to which nothing is left to discretion.

> It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law."

In *Teal* v. *Felton*, 12 Howard, 284, the plaintiff brought trover against a postmaster for a failure to deliver his mail to him. The postmaster justified under a law requiring extra postage for mail matter having a memorandum or writing, other than the address, upon the cover of the mail. Upon the cover in question was a single letter of the alphabet, detached from the address, and having nothing to do with it. This, the postmaster claimed, was a memorandum or writing which justified him in charging extra postage, and withholding the mail for a failure to pay it. On page 291 of the opinion the court says:

> "The acts forbid a memorandum * * * but in neither are found the terms 'marks or signs'. A single letter or initial upon the wrapper of a newspaper is neither a memorandum nor a writing, in the sense in which either of those terms are ordinarily used. The initial in this case does not seem to have been one or the other. It is not a memorandum certainly, and a single letter of the alphabet can convey no other idea than that it belongs to it, unless it is used numerically. This was not a case in which judgment could be used to determine any fact, except by some other evidence than the letter itself. Nor was it calling for discretion in the legal acceptation of that term in respect to officers who are called upon to discharge public duties. What was done by the postmaster was a mere act of his own, and ministerial, as that is understood to be, distinct from judicial."

A case very similar to the one at bar was before the Postoffice Department in 1905. The National

Life Insurance Company of the United States of America was seeking to induce the postmaster at Chicago to deliver to it all mail addressed to National Life Insurance Company at Chicago generally, without street address, on the ground that most of the mail so addressed was intended for it rather than the latter company. The attorney-general, Honorable W. H. Moody, now of this honorable court, in an opinion given to the postmaster-general on June 16, 1905, after stating the facts of the case, and citing from the statutes and Postal Laws and Regulations, says:

> "The mail in dispute is admittedly addressed to the Vermont corporation, which has transacted business in Chicago under that name for forty-five years. Under the law postmasters are confined to an inspection of the outside of the envelope in determining for whom the missive is intended. Obviously, if a letter is addressed to John Doe, it would be contrary to every principle of equity to deliver it to Richard Roe on the theory that it was intended for him instead of John Doe. The burden of establishing his claims in the courts should be put upon the person claiming mail not addressed to him, instead of placing that burden upon the person to whom such mail is addressed. The mail in dispute, therefore, should be delivered to the National Life Insurance Company."

This language is so appropriate to the case at bar that we adopt it as a part of our argument.

This case later came before this court in *National Life Insurance Company* v. *National Life Insurance Company*, 209 U. S., 317, and a decision entirely in harmony with the above opinion was rendered. On page 240 of the opinion this language is used:

> "The whole claim of appellant rests upon the averment that a larger majority of the letters that are addressed to the defendant company by its own name alone are in reality intended for the complainant. This fact does not clothe the complainant with the legal right to insist that the Chicago postmaster shall be directed to deliver all mail of the character in question to a corporation other than that to which the mail is addressed."

The relief prayed for was denied on the ground, as we understand it, that a proper case was not made out to overthrow the decision of the postmaster-general inasmuch as appellant failed to establish a legal right to the mail. Had the situation been reversed we do not understand the court to say that the decision of the postmaster-general would have been final. The refusal to reverse was not so much a lack of jurisdiction as a failure of showing to warrant such an action.

We submit that in the case at bar the situation is reversed. The legal right to the mail is in the addressee, the Central Trust Company. As well said by a member of this honorable court,

> "Under the law postmasters are confined to an inspection of the outside of the envelope in determining for whom the missive is intended. * * * The burden of establishing his claims in the courts should be put upon the person claiming mail not addressed to him, instead of placing that burden upon the person to whom such mail is addressed." (*Supra.*)

Not only is all of the mail addressed in the name appellant, but part of it has the street number of appellant on it. The postmaster has no right to open the mail or authorize others to open it to ascertain

its contents. By so doing he subjects himself to a penalty.

In re Jackson, 96 U. S., 727, 733.

United States v. *Mathias*, 36 Fed. Rep., 892, 896.

United States v. *Eddy*, 1 Bissel, 227, 228.

All the postmaster has a right to do under the law in determining for whom mail is intended is to look at the cover of the mail. Determining whether "Central Trust Company" means "Central Trust Company of Illinois" is a ministerial act pure and simple. It requires no judgment or discretion other than an inspection of the mail itself. In this respect the case at bar is in line with *Teal* v. *Felton*, *supra*. The postmaster is no more at liberty to act upon mere guesses or surmises than a private agent. The rule that the discretion of an executive officer will not be disturbed pre-supposes that information upon the matter upon which judgment and discretion are invoked is presented to the officer for consideration, or that knowledge respecting them is possessed by him.

United States v. *Barlow*, 132 U. S., 280.

The subject is fully discussed in *School of Magnetic Healing* v. *McAnulty*, 187 U. S., 94, 107-109.

B. Where the act of a head of a department is beyond the scope of his authority such act is subject to review by the courts and any person who will sustain injury by such act may enjoin it.

Noble v. *Union River Logging R. R.*, 147 U. S., 165, 171-2.

Board of Liquidation v. *McComb*, 92 U. S., 531, 541.

Public Clearing House v. *Coyne*, 194 U. S., 497, 509.

Bates & Guild Co. v. *Payne*, 194 U. S., 106, 108.

Brown v. *United States*, 9 Howard, 487.

Payne v. *Nat'l Ry. Pub. Co.*, 20 App. D. C., 581.

The Postoffice Department cannot act arbitrarily and do as it likes with the mail. If it has any right to refuse to accept or to refuse to deliver mail except to the addressee that right must come from some law of Congress (*School of Magnetic Healing* v. *McAnnlty*, 187 U. S., 94, 109). Congress has given the postmaster-general the right to exclude letters from the mail only where the mail is being used for certain prohibited purposes, as where the mail matter is obscene (25 U. S. Statutes at Large, 187, 496), or where the letters concern lotteries, gift enterprises and schemes to defraud and obtain money by false pretenses (U. S. Revised Statutes of 1878, Section 3894). Congress has also authorized the postmaster-general to classify the mail matter, and he has the right to refuse to carry mail except under its proper class (statutes collected in *Houghton* v. *Payne*, 194 U. S., 88). In no other case has any authority been given him to exclude or to refuse to deliver mail except to the addressee. On the other hand, there are two express statutory provisions that he must deliver the mail to the addressee. Section 3890, U. S. Revised Statutes of 1878, provides:

> "Any postmaster who shall unlawfully detain in his office any letter or other mail matter, the posting of which is not prohibited by law, with intent to prevent the arrival and de-

livery of the same to the person *to whom it is addressed*, shall be punishable by a fine of not more than five hundred dollars, and by imprisonment for not more than six months, and he shall be forever thereafter incapable of holding the office of postmaster."

Section 3892 provides:

"Any person who shall take any letter, postal card or packet, although it does not contain any article of value or evidence thereof, out of a postoffice or branch postoffice, or from a letter or mail carrier, or which has been in any postoffice or in the custody of any letter or mail carrier, before it has been delivered *to the person to whom it was directed*, with a design to obstruct the correspondence, or to pry into the business or secrets of another, or shall secrete, embezzle or destroy the same, shall, for every such offense, be punishable by a fine of not more than five hundred dollars, or by imprisonment at hard labor for not more than one year, or by both."

In reading the order of the postmaster-general in this case (transcript page 7), we see that the reason given for delivering the mail in controversy to the Central Trust Company of Illinois was an alleged act of indiscretion upon the part of Mr. Pfau, an officer of the Central Trust Company, in failing to deliver a certain piece of mail to the Central Trust Company of Illinois. Not enough of the facts are set forth for us to determine whether this act of Mr. Pfau was justifiable or not, but that does not concern us. It is sufficient answer to say that nowhere is the postmaster-general given any authority to deliver the mail of one party to another because one of the parties has acted wrongly in regard to mail delivered to him. He cannot be deprived of the

use of the mails by reason of that act, nor can his mail be confiscated because of it. The decision of the postmaster-general, based upon such a reason, was wholly unauthorized, and as such is reviewable by the courts.

II.

APPELLANT'S FAILURE TO FILE ITS CERTIFICATE OF INCORPORATION DOES NOT AFFECT THE ISSUES OF THIS CASE.

At the time appellant company established its office in Chicago on April 17, 1897, there was no law of Illinois requiring a foreign corporation to file its articles of incorporation with the secretary of state, but on May 26th following such a law was passed, and this law went into effect July 1st, two months and a half after appellant had established its office. In February, 1903, appellant complied with all the requirements of this law and obtained a certificate to that effect from the secretary of state (Abst., 3). From that time until the present appellant has complied with all the state laws, and it was in no way in default at the time it filed its bill of complaint in this case. We have, then, an original lawful organization. We have this organization continued in fact for over five years without a certificate of authority from the state, and then continued for over three years after such certificate is obtained. The appellees cannot claim that the original establishment of appellant was wrongful, nor that it was doing business in contravention to the state law at the time it came into court for relief.

The only possible contention of the appellees on this point is that appellant is not entitled to relief because of a past violation of law. In plain words, the contention is: The legal existence of appellant was cut off by the Act of May 26, 1897, and it had no legal existence until it complied with that law, which was after the incorporation of the Central Trust Company of Illinois. That although it existed in fact and carried on business, it was virtually an outlaw, and its name and property were lawful spoil for whoever might seize them. That although its adoption of the name Central Trust Company came five years prior to the incorporation of the Central Trust Company of Illinois, and although it had received mail for five years under that name, because it had not complied with the corporation laws of the state the name Central Trust Company was unappropriated. By taking the name of Central Trust Company of Illinois this appellee became a pioneer in the use of that or similar names, and when appellant complied with the state laws a few months later and continued its former business under that name, which it had used continuously from the time of its establishment, appellant was taking a name which had been appropriated by one of the appellees, and did so at its peril and subject to all loss or inconvenience that might follow therefrom. Let us examine this contention in the light of the Illinois statute, and the decisions of the courts.

The sections of this act which apply are the second and the third, and we quote so much of them as is pertinent:

> "Every company incorporated for the purpose of gain under the laws of any other state

—now or hereafter doing business within this state, shall file in the office of the secretary of state a copy of its charter—or a copy of its certificate of incorporation. Upon a compliance with the above provisions by said corporation, the secretary of state shall give a certificate that said corporation has duly complied with the laws of this state, and is authorized to do business therein.

Every foreign corporation amenable to the provisions of this act which shall neglect or fail to comply with the conditions of the same shall be subject to a fine or not less than $1,000. It is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of this act, to report the fact to the prosecuting attorney of the county in which said corporation is doing business, and the prosecuting attorney shall * * * institute proceedings to recover the fine herein provided for * * * in addition to which penalty, on and after the going into effect of this act, no foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action in any of the courts of this state upon any demand, whether arising out of contract or tort." (Vol. IV, Starr & Curtiss' Ill. Rev. Stat., pp. 310, 311.)

Note, first, that this act prescribes penalties for its violation—the imposition of a fine and a disability to use the state courts. Nothing is said about a cessation of legal existence. The act does not say that a foreign corporation must leave the state, or remain out of the state, until it complies with the law. It does not say a foreign corporation shall be deprived of all rights to its mail until it files its charter, and if it did it would be assuming powers which belong to the Federal Government alone. A

state may forbid a foreign corporation to do business within its boundaries, but it cannot forbid it the right of the mails.

Doing business has long been held to have a restricted meaning and refers only to the business for which the corporation was formed. In *Bradbury* v. *Waukegan & Washington M. Co.*, 113 Ill. App., 600, 607, it was held that the opening of an office, the placing of a safe and furniture therein for the convenience of an officer who issued certificates of stock from there, and the holding of directors' meetings in the office did not constitute doing business by the corporation so as to give the courts jurisdiction over it. Much the same proposition has been laid down in the following authorities:

Boardman v. *S. S. McClure Co.*, 123 Fed. Rep., 614.

Caldwell v. *North Carolina*, 181 U. S., 622.

Thompson on Corporations, Section 7936.

These authorities have just this bearing upon the case at bar, that if a corporation which maintains an office and performs some clerical work in the office, and receives mail at the office, is not doing business in the technical sense of the statute, the Illinois statute does not apply to the appellant in this case. All allegations other than that an office was established here and that mail was received at that office by the Central Trust Company are immaterial to this issue and may be disregarded. Even if it be regarded as material that appellant, in addition to the facts above, actually carried on the business for which it was organized, it is only this latter business which the statute purports to discourage. The

statute desires to prevent a fraud upon the citizens of Illinois by foreign corporations coming within its jurisdiction, and to prevent this fraud forbids it to carry on its business within the jurisdiction until it has complied with certain provisions. This is the strongest possible interpretation to be placed upon the statute. Maintaining an office and receiving mail does not bring the corporation into business relations with the citizens of the state and does not subject them to the liability of loss through fraud, consequently that is not doing business as contemplated by the statute, and is not forbidden, whatever else may be.

A number of states have held under similar acts that where a foreign corporation makes a contract within a state before filing its articles of incorporation and subsequently files its articles the contract may be enforced; that the remedy is merely suspended until the law has been complied with.

Am. & Eng. Enc. of Law (2nd Ed.), pp. 875-6.

Caesar v. *Capell*, 83 Fed. Rep., 403, 423.

Wood Mowing Co. v. *Caldwell*, 54 Ind., 270, 281.

Carson-Rand Co. v. *Stern*, 129 Missouri, 381.

Neuchatel Asphalt Co. v. *Mayor*, 155 N. Y., 373.

Behler v. *German Mut. Fire Ins. Co.*, 68 Ind., 347, 355.

Crefeld Mills v. *Goddard*, 69 Fed. Rep., 141, 142.

Illinois has taken a somewhat different view in the case of *United Lead Company* v. *Elevator Man-*

ufacturing Co., 222 Ill., 199, where such a contract was held to be void *ab initio*. But in this case the court does not hold that the foreign corporation has no existence and that the contract is void because of the non-existence of one of the contracting parties. The court expressly puts the decision upon the ground that it is the policy of the state to forbid the contract being made. Nowhere in Illinois decisions is a case to be found holding that a foreign corporation may not have an office and receive mail and retain its mail. In fact, there is one case which clearly holds that the foreign corporation is entitled to its name and cannot be enjoined from using its name because of a failure to comply with the incorporation laws.

This is the case of *Ottoman Cahvey Co.* v. *Dane*, 95 Ill., 203. Dane and others had formed a corporation under the laws of Michigan called the Ottoman Cahvey Company and carried on its business in Chicago under that name from the time of its organization until the bill in that case was filed. Subsequently, under claim that the Michigan corporation was not legally organized and had been dissolved by decree of court, the Ottoman Cahvey Company incorporated under the laws of Illinois, and sought to enjoin the use by defendant in his business of the name Ottoman Cahvey Company. In denying this injunction the court says:

> "The fact that a corporation was organized under the laws of this state, subsequent in date to the time defendants commenced business, which assumed the same name under which defendants were carrying on their business, could confer no right upon complainant to invoke the

> aid of a court of equity to restrain the defendants from the use of the name. So far as the complainant was concerned, the defendants had the prior right to the use of the name, as they had conducted their business under the name assumed continuously from the date of the organization of the Michigan corporation. If the Michigan corporation was not legally organized or if it was dissolved by decree of court, the defendants who carried on the business did so as co-partners, and they had the right, as such, to assume any name they saw proper; and they could use the name 'Ottoman Cahvey Company' as well without a legal organization as they could had they been legally organized under the laws of Michigan." (Page 205 of the opinion.)

If this decision means anything it means that so far as the appellees in the case at bar are concerned it is immaterial whether appellant was legally incorporated or not. If it was not a corporation by reason of non-compliance with the state registration laws, it nevertheless had the right to use the name Central Trust Company, and to receive mail in that name, and the Central Trust Company of Illinois, by choosing a name similar to that of appellant, cannot claim, because of its incorporation first, that it is entitled to first rights in the name "Central Trust Company." The name had been used by appellant, and appellant could not be deprived of its use, nor of the benefits incident to its use, by a subsequent incorporation by one of appellees under a similar name.

To the same effect is the case of *Grand Lodge A. O. U. W. v. Graham*, 96 Iowa, 592. That was a suit to enjoin the officers of an alleged unincorporated society from using the name of the Grand Lodge

of the Ancient Order of United Workmen of Iowa," and to restrain them from carrying on the business of life insurance. On pages 608 and 609 of the opinion the court uses the following language:

> "The question arises, what right, if any, has the plaintiff—by reason of its incorporation, to the exclusive use of the name? It seems to us that it has no such right. The defendants have the prior right to the use of the name, as they had been using it—continuously from the time of the organization of the original grand lodge up to the present. The fact that they are not incorporated is entirely immaterial, for they have been doing business under this name with the implied assent of the state authorities all these years. They have not adopted a name selected by the plaintiff for the purpose of defrauding—or to mislead or deceive the public. The facts appear to be that the plaintiffs have taken a name which was theretofore in use by the defendants and of which they cannot be deprived simply because the plaintiff sees fit to use it as a corporate name. The question here is not whether defendant is doing unlawful business, but whether it has a right to the use of the name, be its business lawful or unlawful; and this distinction should not be lost sight of. We do not think a corporation can * * * select a name which is then in use by some other person or persons, and, after recording its articles, insist that the person or persons must abandon the use of the name they have previously selected and under which they are operating. If any damage results to a corporation which selects its name in this manner, it is due to its own folly and indiscretion in selecting a name which is already in existence."

On pages 612 and 613 the court continues:

> "It is argued on behalf of appellee that the defendant is and was unlawfully engaged in

business as a life insurance company without complying with the laws of the state, and that for this reason it is not entitled to the use of the name. The question as to the character and legality of the defendant's organization is argued with much skill—but we do not find it necessary to determine whether defendant is an insurance company, for if it be conceded that it is an insurance company, and that it is doing business without complying with the laws of the state it is doubtful whether plaintiff may enjoin it from doing business under a certain name. As a general rule, such action must be brought by the state."

The courts of Illinois have held in numerous cases that where there is a valid corporation law, and a user by a corporation of the powers intended to be granted by the corporation law, a mere failure to file articles of incorporation with the secretary of state, or otherwise comply with some of the statutory regulations, cannot be taken advantage of by third parties collaterally. The corporation is held to have a *de facto* existence of which it can be deprived only in a direct proceeding by the state.

Tarbell v. *Page*, 24 Ill., 46, 48.

Thompson v. *Candor*, 60 Ill., 244, 247-8.

Cin. LaF. & Chi. R. R. Co. v. *D. & V. Ry. Co.*, 75 Ill., 113, 116.

The People, ex rel. v. *Trustees of Schools*, 111 Ill., 171, 173.

Hudson v. *Green Hill Seminary*, 113 Ill., 618, 624.

Numerous states have passed laws making it essential for foreign corporations to file their articles of incorporation to hold real estate within the state. But where the corporations have purchased lands

within those states before filing their articles it was held that the state alone could take advantage of their failure. No other corporation could pre-empt the land or confiscate it to its own use on the theory that it was not owned by the foreign corporation. The latter could pass good title to land so taken and held by it, and could maintain an action for trespass upon it.

Seymore v. *Slide & Spur Gold Mines*, 153 U. S., 523.

Fritts v. *Palmer*, 132 U. S., 282, 291.

Whitman Mining Co. v. *Baker*, 3 Nevada, 386.

Carlow v. *Aultman*, 28 Neb., 672, 676.

Sherwood v. *Alris*, 83 Ala., 115.

The following cases hold that where a state requires registration by a foreign corporation doing business within the state, and imposes a penalty for non-compliance with the statute, that in the mind of the state legislature the penalty is sufficient to accomplish the desired result, and is exclusive of all other remedies:

Fritts v. *Palmer*, 132 U. S., 282, 289.

Sherwood v. *Alris*, 83 Ala., 115, 119.

State Mut. F. Ins. Assoc. v. *Brinkley Co.*, 61 Ark., 1, 6.

Kindel v. *Beck Lithographing Co.*, 19 Colo., 310, 314.

Union Mut. L. Ins. Co. v. *McMillen*, 24 Ohio St., 67, 79.

Garrott Ford Co. v. *Vermont Mfg. Co.*, 20 R. I., 187, 189.

Toledo Tie Co. v. *Thomas*, 33 W. Va., 566, 570.

Suppose that between the years 1897 and 1903 mail addressed to the Central Trust Company, Chicago, Illinois, "had been tampered with by an outsider, or that some employe of the postoffice department had abstracted money or other valuable articles from such mail, could it be contended upon a prosecution of the guilty party that the Central Trust Company was not entitled to this mail? That there was, in fact, no Central Trust Company at Chicago, Illinois, and that because of such facts there had been no larceny or tampering with the mail belonging to anybody? The very statement of such a proposition is its refutation.

Suppose, further, that during these years without any reason whatsoever the postmaster-general had ordered that no mail should be delivered to the Central Trust Company at Chicago. Could it be contended that the postmaster-general could not be compelled to deliver the mail in question?

The appearance on the scene of another corporation of a similar name in no way effects the situation. The Central Trust Company of Illinois is no more entitled to the mail of the Central Trust Company than to the mail of the John Jones Company, which also may not have filed its charter.

However illegal and unwarranted the business of the Central Trust Company, when acting without a license, the maintaining of an office in Chicago and receiving mail there under its corporate name was lawful without a license, and the Central Trust Company of Illinois could no more appropriate its name and mail than it could its office furniture and books.

Under any possible view of the case it would seem

that appellant is entitled to that portion of its mail which has the street address upon it. The Court of Appeals seems to have read appellant's bill carelessly It says:

> From our affirming the decree without repeating or enlarging upon the views orally expressed at the argument, the parties must not infer that we sanction the delivery to the appellee company of mail so specifically addressed to appellant's business rooms that no doubt can exist as to the identity of the addressee. Appellant's bill, in our opinion, is bottomed on its asserted right to have delivered to it all mail addressed 'Central Trust Company, Chicago, Illinois.' There is no allegation of the postmaster's refusal to deliver to appellant the mail specifically addressed to its business rooms. An injunction should not issue on the bare fact that such mail may inadvertently have been delivered to the appellee company." (Trans., p. 30.)

It is true that much of the bill of complaint confines itself to the mail addresses to Chicago generally, but the fifteenth paragraph of the bill (Trans., p. 8) sets forth the following facts:

> "Your complainant further states that *many letters* addressed Central Trust Company, *and addressed to the corner of Monroe and La Salle streets in Chicago*, have been delivered by the defendant, Fred A. Busse, to the defendant, Central Trust Company of Illinois, and that said letters have been opened by the defendant, William R. Dawes, as aforesaid, and their delivery to this complainant delayed by reason thereof: *that the Central Trust Company of Illinois is now claiming all mail* directed to Central Trust Company, Chicago, Illinois, and *directed to the corner of La Salle and Monroe streets* in said city, *and is endeavoring, as your complainant believes, to have the postmaster at Chicago deliver to it all mail so directed,*

> Complainant further states that the place of business of the defendant, Central Trust Company of Illinois, is not located at the corner of Monroe and La Salle streets in the City of Chicago, but that the office of this complainant is so located."

In paragraph 16, on page 9 of the transcript, this further allegation is set forth:

> "That the defendant, Fred A. Busse, *is about to continue delivering* all mail addressed to Central Trust Company, without the street address of this complainant upon the same, and *all mail directed to Central Trust Company, corner of La Salle and Monroe streets, Chicago, Illinois*, to the said defendant company, and that the defendant company is about to receive the same, and that the defendant, William R. Dawes, is about to open the same."

There is here no inadvertent delivery of a few pieces of mail matter, but a direct allegation that the postmaster has already delivered much mail so addressed, and is about to continue that course.

On this allegation alone appellant is entitled to a reversal carrying with it the costs of this appeal. If appellant cannot receive mail addressed to its street number it is, indeed, in a bad way.

CONCLUSION.

All of the mail in controversy is addressed to appellant. Some of it has the street address of appellant upon it. If any portion of this mail is intended for appellee that fact cannot be ascertained without opening the mail, which only the addressee has a right to do. If thereby appellee is prejudiced the fault lies with the correspondents of appellee in not properly directing their mail, and with appellee for choosing a name so similar to appellant's, when it knew appellant was doing business under that name in Chicago. In choosing such a name appellee took all chances connected therewith. Appellant should not suffer because of the careless acts of third parties in addressing mail, and certainly not for appellee's willful act. Appellee is compelled to justify by saying that it was seeking to take advantage of appellant's non-compliance with a state law, an act which is certainly not equitable, even if legal.

We respectfully submit that appellant is entitled to the relief prayed for, and that the decrees of the Circuit Court and of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

W. H. Sears,
Solicitor for Appellant.

Daniel McCaskill and
O. L. McCaskill,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1909.

NO. 86.

CENTRAL TRUST COMPANY,
Appellant,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE,
Appellees.

Appeal from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF AND ARGUMENT FOR APPELLEES.

PAM & HURD,
Solicitors for Appellees, Central Trust Company of Illinois and William R. Dawes.

MAX PAM,
STEPHEN A. DAY,
Of Counsel.

Geo. Rosenstein Co., Printer, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1907.

NO. 642.

CENTRAL TRUST COMPANY,
Appellant,

vs.

CENTRAL TRUST COMPANY OF ILLINOIS, WILLIAM R. DAWES and FRED A. BUSSE,
Appellees.

Appeal from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF AND ARGUMENT FOR APPELLEES.

STATEMENT OF THE CASE.

This is an appeal from a decree rendered in the United States Circuit Court of Appeals for the Seventh Circuit, affirming the decree of the United States Circuit Court for the Northern District of Illinois, Eastern Division, which said decrees sustained appellees' demurrer to appellant's bill of complaint, praying for a perpetual injunction against the Central Trust Company of Illinois and William R. Dawes and Fred A. Busse, the postmaster of

Chicago, Illinois, restraining the former from receiving and the latter from delivering to appellee all mail addressed "Central Trust Company, Chicago, Illinois," which mail, by order of the Postmaster General of the United States, made after inquiry and examination of the law and the facts, was and is delivered to appellee.

The appellees in this case are the Central Trust Company of Illinois, a banking corporation; William R. Dawes, cashier of the bank, and Fred A. Busse, postmaster of the City of Chicago. We shall, however, for the purposes of brevity, use the term "appellee" throughout this brief as referring to the appellee, Central Trust Company of Illinois, alone.

The statement of facts made by the appellant is, in some respects, incomplete, and we deem it necessary to amplify it by calling attention to certain facts which are specifically averred in the bill of complaint.

1. The bill alleges (Rec., p. 3) not only that on the 17th day of April, 1897, the appellant established an office in the City of Chicago, but further alleges that it "began to carry on its business at said place under the name of Central Trust Company, and so continued to do up to and including the 7th day of February, 1903."

2. The bill further alleges (Rec., p. 3) that the appellant, "in the regular course of its said business," has received and continues to receive mail matter.

3. The ruling which was made by the Postmaster General on the 10th day of January, 1903, in addition to setting forth the fact that a letter was deliv-

ered to Mr. Pfau, representing the appellant, containing remittances intended to protect checks drawn on the appellee, and that said letter was, by Mr. Pfau, returned to the sender instead of being delivered to the postoffice to be redelivered to the appellee, thereby jeopardizing the sender's credit, contains the further finding of fact (Rec., p. 7), to-wit: "Mr. Pfau well knew that the deposit was intended for the Central Trust Company of Illinois." The correctness of this finding is admitted by the bill, for its accuracy is nowhere challenged.

4. The bill further alleges (Rec., p. 8) that appellant has requested the postmaster, appellee Busse, to deliver to it all mail addressed to the Central Trust Company, but that said appellee Busse has declined said request.

5. The bill further states (Rec., p. 8) that many letters addressed "Central Trust Company" and addressed to the corner of Monroe and La Salle streets, in Chicago, Illinois, have been delivered by appellee Busse to appellee, and that appellee is claiming such mail, *but nowhere alleges that said appellee Busse has been requested by appellant to deliver to it such mail so addressed to the Corner of Monroe and La Salle streets, Chicago, Illinois, and that said appellee Busse has refused and declined so to do.*

6. The bill further alleges (Rec., p. 9) that appellee Busse is about to continue delivering all mail addressed to "Central Trust Company," but without the street address of the appellant upon the same, and all mail directed to "Central Trust Company, Corner of La Salle and Monroe Streets, Chi-

cago, Illinois," to appellee, and that appellee is about to receive and open the same, *but nowhere alleges that appellant has requested said appellee Busse to deliver to appellant such mail so addressed to the Corner of Monroe and La Salle streets, Chicago, Illinois, and that said Appellee Busse has refused and declined so to deliver such mail.*

The questions presented arise upon the demurrer filed by appellee to appellant's bill of complaint in the Circuit Court.

Appellee demurred upon the general ground that appellant's bill did not make or state such a case as entitled it to the relief prayed for, and for special causes of demurrer represented to the court (Rec., p. 14):

> "First: That the said complainant shows that it has not any equitable standing in this court and is not entitled to any equitable relief."
>
> "Second: That the rights of the complainant were submitted to the Postoffice Department and passed upon by that department, and its conclusions unreversed and in force."
>
> "Third: That there is no allegation or showing that any fraud or mistake intervened or existed in the presentation and submission of the matter to the Postoffice Department, and the action of the department thereon."

ARGUMENT.

Appellee insists that the rulings of the Court of Appeals and the Circuit Court, sustaining the demurrer to appellant's bill of complaint, were right and should be affirmed by this court, and in support of this contention urges the correctness of the following propositions:

First: The name "Central Trust Company" so designates appellee as to justify the postmaster in making delivery to appellee of mail so addressed.

Second: The rights of the appellee to the use of the name in question were prior to those of the appellant.

Third: Appellant does not come into this court of equity with clean hands.

Fourth: Appellee is entitled to have mail so addressed delivered to it in the first instance under the Laws and Regulations of the Postoffice Department.

Fifth: The Postoffice Department has decided the questions in controversy and the court will neither overturn such decision nor interfere with the discretion of the Department.

Sixth: The appellant has misconceived its remedy. Its proper proceeding should be by mandamus in the courts of the District of Columbia against the Postmaster General.

I.

THE NAME "CENTRAL TRUST COMPANY" SO DESIGNATES APPELLEE AS TO JUSTIFY THE POSTMASTER IN MAKING DELIVERY TO APPELLEE OF MAIL SO ADDRESSED.

Appellant does not allege in its bill of complaint that all letters addressed "Central Trust Company, Chicago, Illinois," belong to it, nor does it allege that a majority of such letters are so deliverable, but simply that "a great quantity of said mail was intended for this complainant." (Rec., p. 7.) It is fair to presume that a majority of such letters were not intended for appellant, otherwise it would have pleaded that fact. Thus the appellant places itself in the position of claiming the right to have all mail so addressed delivered to it in the first instance, even though such letters are not intended for it. This allegation of the bill, without taking into consideration any other facts, leaves no doubt that the designation "Central Trust Company" on mail matter was and is used to designate the appellee. There is no force in appellant's argument that the mere abbreviation of appellee's name gives to appellant a superior right to mail so addressed. It is common knowledge that the names of corporations are frequently abbreviated, and that that fact does not destroy its identity. From the allegations contained in appellant's bill it does not appear but that the Postmaster, from a mere inspection of the envelopes was in doubt as to which of the two, appellant or appellee, mail so addressed should be delivered, and merely determined that according to his best judgment the mail matter was in all probability intended for appellee and delivered the same accordingly.

The proposition that a corporation cannot be designated, known by and receive letters, conveyances or grants unless its corporate name is in all respects fully and accurately set forth is untenable and cannot be sustained by authority.

In *Chadsey* v. *McCreery*, 27 Ill., 253, a note was made payable to the treasurer of the Rock Island & Alton Railroad Company. The court said (p. 254):

> "The fact appears to be, that the true name of the railroad company is Alton and Rock Island Railroad. The transposition can be of no such consequence in this suit. There can be no doubt as to which railroad was meant of which the appellee was the treasurer. In 1 Kyd., 237, it is said: 'As the name of a corporation frequently consists of several words, the transposition, interpolation, omission or alteration of some of them may make no essential difference in their sense.'"

The same rule in almost identically the same words was laid down in *Board of Education* v. *Greenebaum Sons*, 39 Ill., 609.

In the case of *Clement* v. *City of Lathrop*, 18 Fed., 885, the court said:

> "A corporation, like a natural person, may be known and designated by several names, although it can have but one corporate designation. * * * It is enough that the identity of the corporation is unmistakable either from the face of the instrument or from the averments and proof."

See, also, 7 Am. and Eng. Enc. of Law (2d Ed.), page 687.

The doctrine contended for by us is sustained by the rules of the Postoffice Department. Clause 10 of Section 634 of the Postal Laws and Regulations of 1902 expressly provides:

> "A person engaged in a legitimate business may adopt a business name and when duly identified may receive his mail, registered or ordinary, by that name as well as by his proper name."

This clause applies as well to a corporation as to an individual, and it is immaterial whether the adoption of the "business name" be made by the corporation or by its patrons; its acquiescence in the use thereof is a ratification of such adoption.

There can be no question that the fact that persons dealing with the appellee customarily abbreviated its name by leaving off the terms "of Illinois" does not deprive the corporation of the right to receive mail matter so designated. It would be absurd to contend that the appellant would be entitled to demand a specific piece of mail matter in the face of conclusive proofs that it belonged to appellee. The fact that appellee's name was abbreviated could not bar its property right therein. The courts recognize and enforce the rights of the appellee in such cases; certainly the Postmaster should.

The bill of complaint does not allege that appellee is not customarily known as "Central Trust Company." On the contrary, it appears beyond question that it is customarily so known. The postmaster at Chicago is in a better position than any one else to know the manner in which appellee is usu-

ally designated by persons who are dealing with it. Nor is it necessary, in order to bring such knowledge to the postmaster, that he should inspect the contents of the mail. In the very nature of things, if he delivers, or has been delivering, vast quantities of mail, either to appellant or appellee, he is constantly advised and necessarily knows the proportion of the mail so delivered which belonged to the one corporation and which belonged to the other. The appellant does not allege in its bill of complaint that even a major portion of the mail matter addressed "Central Trust Company" is intended for it.

Then, too, we must bear in mind that the appellant and appellee are engaged in different lines of business in the City of Chicago. Appellant is not a banking corporation. By the averments of its own bill appellant states "that it does an extensive mining, promoting, real estate and trust business." (Rec., p. 9.) Thus it is at once apparent that the task of the postmaster in this respect is not so difficult as it would be were the two companies engaged in the same line of business. It should not be difficult for the Postoffice Department, handling the daily mail, to discriminate, with reasonable accuracy, between the mail of a mining and promoting corporation and that of a bank.

Since, therefore, the postmaster at the City of Chicago knows that letters addressed "Central Trust Company" are intended for the appellee, the name "Central Trust Company" (whatever it may be), so far as the postmaster is concerned (for he has nothing whatever to do with the question as to what

is the strict legal corporate name of persons receiving mail), may either be the appellant or the appellee, and it is the duty of the postmaster to use his best judgment in making delivery of the mail to, so far as possible, deliver it speedily and promptly to the corporation for which it is intended.

As above stated, it is not the duty or province of a postmaster at a given postoffice to examine the articles of incorporation of different companies for the purpose of determining their corporate names. It is his duty to receive and deliver mail to the person to whom the addressor intended it should be delivered. All that the postmaster knows is that persons sending mail to the City of Chicago address the same to "Central Trust Company"; that there are two corporations in the City of Chicago for whom such mail may be intended and who customarily receive mail under that designation.

The extent to which corporate names are abbreviated is a fact of which no proof is necessary, and which is well known to this court. For example, the true corporate name of the institution commonly known as the "First National Bank" in the City of Chicago, is "First National Bank of Chicago," and yet probably not fifty per cent of the mail of that large financial institution is thus addressed. For the purpose of the argument, if a Canadian bank by the name of "First National Bank," similarly situated with respect to time of organization and non-compliance with the laws of Illinois, as is appellant in the case at bar, had an agency in Chicago, under appellant's contention all mail addressed "First National Bank, Chicago, Illi-

nois," *prima facie* is not intended for the First National Bank of Chicago at all, because its correspondents have not included "of Chicago" in addressing their letters. His argument would apply equally to two corporations, one "*The* Central Trust Company," the other "Central Trust Company." The omission of the article "*The*" would entitle the last named company to all the mail.

We, therefore, insist that the fact that mail comes to the City of Chicago addressed "Central Trust Company" does not even of itself mean as a matter of law or as a matter of fact, *prima facie* or conclusively, that such mail belongs to and should be delivered to appellant. It simply means that such mail may belong to either appellant or appellee, and the postmaster must use his judgment and discretion as to the person or corporation to whom such mail shall be delivered, unless he is bound by some rule of law or regulation, to first deliver the same to one of the two corporations which receive mail under and are customarily known by that name.

II.

THE RIGHTS OF THE APPELLEE TO THE USE OF THE NAME IN QUESTION ARE PRIOR TO THOSE OF THE APPELLANT.

The appellant is a foreign corporation organized under the laws of South Dakota. In April, 1897, as it alleges in its bill of complaint (Rec., p. 3), it began to carry on business in the City of Chicago. On July 1, 1897, a statute was passed by the State of Illinois prohibiting a foreign corporation from carrying on business in the state, except upon condition that it

complied with certain regulations imposed by this statute, which is in words and figures as follows:

> "Every corporation for pecuniary profit formed in any other state, territory or country, before it shall be authorized or permitted to transact business in this state, or to continue business therein, if already established, shall designate some person as its agent or representative in this state on whom service of legal process may be had if desired; shall have and maintain a public office or place in this state for the transaction of its business, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. * * * * * *
>
> "Every company incorporated for purposes of gain under the laws of any other state, territory or country, now or hereafter doing business within this state, shall file in the office of the Secretary of State a copy of its charter or articles of incorporation, or in case such company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which said original charter, articles or certificate may have been recorded. Such corporation, by its president, secretary or any officer thereof, shall make and forward to the Secretary of State, with the articles or certificate above provided for, a statement duly sworn to of the proportion of capital stock of said corporation which is represented in the State of Illinois by its property located and business transacted therein and such statement shall fur-

ther show the name and address of the agent or representative of said corporation in this state; and such corporation shall be required to pay into the office of the Secretary of this state, upon the proportion of its capital stock represented by its property and business in Illinois, fees equal to those required of similar corporations formed within and under the laws of this state. Upon a compliance with the above provisions by said corporation, the Secretary of State shall give a certificate that said corporation has duly complied with the laws of this state, and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Illinois; and such certificates shall be taken by all courts in this state as evidence that the said corporation is entitled to all the rights and benefits of this act, and such corporation shall enjoy those rights and benefits for the time set forth in its original charter or articles of association, unless this shall be for a greater length of time than is contemplated by the laws of this state, in which event the time and duration shall be the limit of time set out in the laws of this state. * * *

"Every foreign corporation amenable to the provisions of this act which shall neglect or fail to comply with the conditions of the same as herein provided shall be subject to a fine of not less than $1,000.00, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the Secretary of State, as he may be advised that corporations are doing business in contravention of this act, to report the fact to the prosecuting attorney of the county in which such corporation is doing business, and the prosecuting attorney shall, as soon thereafter as is practicable, institute proceedings to recover the fine herein provided for, and his compensation therefor shall be 10 per cent

of the amount recovered, the remainder to be paid into the revenue fund of the state; in addition to which penalty, on and after the going into effect of this act no foreign corporation as above defined which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort."

Supp. (1902), Starr & Curtis, Ann. Stat. Ill., Ch. 32, Par. 52, 53, 54.

Appellant concedes in its bill that it did not comply with this statute until after the incorporation of the appellee, but alleges that in February, 1903, the Secretary of State of the State of Illinois issued to it a license to carry on business in that State.

We contend, in the first place, that appellant did not have, and does not now have, the right as against appellee to carry on business in the State of Illinois under the name "Central Trust Company," notwithstanding the issuance of the license by the Secretary of State.

The statute authorizing the formation of corporations under the laws of the State of Illinois prohibits the issuance of a license to two corporations of the same name, and the statute which authorizes a domestic corporation to change its name provides that it shall not change its name so that it shall be the same as, or similar to, that of any other corporation organized under the laws of the State. The Supreme Court has held that these two statutory provisions are *in pari materia* and should be construed together. These statutes are as follows:

"It shall be unlawful for the Secretary of State to issue a license for any person or persons to incorporate under the name of any heretofore existing corporation, organized under any general law of this State, until the expiration of thirty days from and after the expiration of the existence of such corporation. * * *"

Hurd's Rev. Stat., Ill., Ch. 32, Sec. 28½.

"That whenever the board of directors, managers, or trustees of any corporation existing by virtue of any general or special law of this State, or any corporation hereafter organized by virtue of any law of this State, may desire to change the name, * * * they may call a special meeting of the stockholders of such corporation * * * for the purpose of submitting to a vote of such stockholders * * * the question of such change of name. * * * *Provided*, that in changing the name of any (other) corporation, under the provisions hereof, no name shall be assumed or adopted by any corporation similar to or liable to be mistaken for the name of any other corporation organized under the laws of this State, without the consent of such other corporation. * * *"

Hurd's Rev. Stat. Ill., Ch. 32, Sec. 50.

In *Illinois Watch Case Co.* v. *Pearson*, 140 Ill., 423, 429, the Supreme Court of Illinois held that the purpose of the act was to prevent confusion of corporate names. If, therefore, two domestic corporations could not be organized under the laws of the State of Illinois under the names "Central Trust Company" and "Central Trust Company of Illinois," for the reason that the two corporations would have substantially the same name—that is, the names are so nearly identical that the very ob-

jects sought to be achieved by the statute to prevent confusion of names would be circumvented if such were permitted—the question then arises, can the appellant, which is a foreign corporation, procure or possess a greater right to carry on business in the State of Illinois under the name "Central Trust Company" than could a domestic corporation? This question, we submit, must be answered in the negative. Section 26 of the General Corporation Act of the State of Illinois provides as follows:

> "Foreign corporations, and the officers and agents thereof, doing business in this State, shall be subjected to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character, organized under the general laws of this State, and shall have no other or greater powers. * * *"
>
> Hurd's Rev. Stat. Ill., Ch. 32, Sec. 26.

This provision is strictly enforced against foreign corporations.

> *Harding* v. *Glucose Co.*, 182 Ill., 551.
>
> *Dunbar* v. *American Telephone & Telegraph Co.*, 224 Ill., 9.

This inability to organize under substantially the same name as an existing domestic corporation is a restriction on a domestic corporation, and by the very terms of Section 26, above quoted, such restriction is alike applicable to a foreign corporation. If it were not so the very object of this restriction as to corporate names could be easily circumvented by organizing under the laws of a foreign state and procuring a license to carry on business in the State of Illinois.

Our contention in this regard is sustained by the case of *Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.*, 142 Ill., 494. In that case a corporation was organized under the laws of the State of Illinois under the name of "Hazelton Tripod Boiler Co." Subsequently the Hazelton Boiler Company was incorporated under the laws of the State of New York, and the New York company sought to enjoin the use by the Illinois corporation of its name, claiming that it was the successor to a business formerly carried on by individuals under the name "Hazelton Boiler Company," and that such name was a trade name. The court, in its opinion, pointed out a clear distinction between the right to the corporate name as such and the right to the trade name of "Hazelton," and in discussing the first branch of the question said (p. 504):

> "So far as the suit relates to the right of the defendant corporation to make use of its own corporate name in the transaction of the business for which it was incorporated, it does not seem to us that the case presented is one upon which there can be any material difficulty or doubt. In the pursuit of this part of the remedy sought, two obstacles seem to confront the complainant, both of which are apparently insuperable. The first grows out of the fact that the complainant is a junior corporation seeking to contest with a senior corporation the right of the latter to the use of its corporate name, and the second arises from the position of the complainant as a foreign corporation seeking to contest with a domestic corporation the right of the latter to the corporate name given by the sovereignty which created it.
>
> "The incorporation of the defendant antedates that of the complainant by nearly four

months, and, consequently, at the time the complainant was organized, the defendant had already received and appropriated its corporate name, and if there has been any infringement, it is the complainant, and not the defendant, which is the aggressor. If the two names are substantially identical, as is claimed, the defendant's right, by virtue of prior appropriation, would seem to be paramount. Even if the complainant were accorded the same legal status which it would have held if it were a domestic corporation, the name given it, if the substantial identity of said name with that of the defendant is conceded, would have been in violation of that provision of Section 2 of our statute in relation to corporations which forbids a license to be issued to two corporations of the same name.

"*But the complainant is in the attitude of a foreign corporation coming into this state and seeking to contest the right to the use of a corporate name which this state, in furtherance of its own public policy and in the exercise of its own sovereignty has seen fit to bestow upon one of its own corporations. For such a purpose, a foreign corporation can have no standing in our courts. Such corporations do not come into this state as a matter of legal right but only by comity, and they cannot be permitted to come for the purpose of asserting rights in contravention of our laws or public policy. It is competent for this state, whenever it sees fit to do so, to debar any or all foreign corporations from doing business here, and whatever it may do by way of chartering corporations of its own, cannot be called in question by corporations which are here only by a species of legal sufferance.*" (Italics ours.)

In considering this decision and its applicability to the case at bar, the court should bear in mind that

this is not a case where it is alleged that the appellee has endeavored, or is endeavoring, to appropriate the good will or trade name of the appellant. The bill of complaint does not allege that the two corporations compete in any sense whatever and, as a matter of fact, they do not so compete. The question of trade mark, trade name or good will is therefore not involved in this case at all; it is merely a question of right to a corporate designation.

It should also be borne in mind that appellant at the time appellee was incorporated, was, so far as carrying on business in the State of Illinois is concerned, an outlaw. It was a foreign corporation. The statutes of this state required it, as a condition precedent to doing business, to comply with these laws. It did not do so, but on the contrary continued for a period of over five years to carry on its business in this state in open defiance of such laws. It therefore possessed in the State of Illnos absolutely no status whatever, and as far as Illinois was concerned, appellee was the first corporation entitled to carry on business under the name of "Central Trust Company of Illinois" or "Central Trust Company," the two names being substantially the same; and appellant in attempting to procure the right to carry on its business in this state, as the Supreme Court says in the *Hazleton* case, certainly could not acquire a higher status than a domestic corporation.

It is insisted, therefore, that the complainant is not now entitled to carry on its business in this state under the name of Central Trust Company, and if so it certainly cannot procure relief in a court of

justice based wholly upon a right which does not exist. This is not a question which can be raised only by the state. The provision in the statute is not inserted for the benefit of the state. It is a provision inserted for the benefit of companies becoming incorporated under the laws of the state. It is designated to prevent confusion, and is a regulation which relates not to the state but to the corporations, and a breach thereof is an injury not to the state but to the prior corporation.

It is apparent that the designations "Central Trust Company" and "Central Trust Company of Illinois" are for all practical purposes identical, and may designate either appellant or appellee, but we insist that appellee is first entitled to the use of that designation and mail so addressed in the State of Illinois and in the City of Chicago therein. Appellant cannot show that it is first entitled to that designation without also first showing that it was not lawfully established in business in the City of Chicago until after the incorporation of appellee. It seeks relief from a court of equity by showing that it was illegally doing business in the State of Illinois. Courts will not grant relief to a complainant where at the foundation of his claim there is illegality, and we contend that this want of compliance with the statutory law of Illinois is the basis of the illegality which appellant must establish to show that it is entitled to the relief sought. This is a complete answer to any claim on the part of appellant to the benefits of section 645 of the Postal Laws and Regulations (1902).

It is true that the appellant does allege in its bill

that the "promoters" (whatever that term may legally mean) of the appellee, knew of the existence of the appellant. This fact, if well pleaded, is, of course, admitted by the demurrer. It is in fact untrue. But it is submitted that it is not well pleaded. The bill of complaint does not set forth in what manner this knowledge came to the promoters of the corporation. The term "promoters" is so uncertain and indefinite as not, of itself, to charge the corporation with knowledge of the fact alleged; and, in addition thereto, the appellant specifically negatives every possible avenue of information through which the corporation or its promoters could have procured such knowledge. If actual knowledge is claimed, it certainly would have been a simple matter to have alleged in the bill the manner in which such knowledge came to the appellee. In the absence of such an allegation, it is submitted that the fact is not sufficiently well pleaded in the bill to stand admitted.

But even if such knowledge be held to be admitted, it is also admitted that the appellant was a foreign corporation, carrying on business under the laws of the state in defiance of those laws, for it had no legal status; no persons dealing with it were bound to recognize it; any contracts which it made could not be enforced by it; and the promoters of a corporation would have had the right to assume that it did not claim or seek any legal status or right to use its name or carry on its business in the State of Illinois.

But appellant claims that as a matter of fact it first established itself in the City of Chicago, and

that it therefore comes within this Postal Regulation, no matter whether such establishment was lawful or unlawful. No rule of law is better settled than that a party bringing forth in a court of justice a fact or transaction, which is essential in the establishment of a right, must show that such fact or transaction has not been created or established by him in defiance of law—is not itself unlawful. If a person seeks to recover upon a contract, and the contract is illegal, the court will not aid him. If he seeks to base a cause of action upon a state of facts and the existence of such facts is in itself unlawful, neither can he recover.

We desire to call the attention of the court to a few adjudications which illustrate this principle, well established in the law. In the case of *Comstock* v. *Henneberry,* 66 Ill., 212, a bill was brought by a party in possession to quiet title. Under the rule prevailing in the State of Illinois, this bill could only be maintained by a person in actual possession, since if he were out of possession he would have an adequate remedy at law. It was shown upon the trial that after possession had been awarded to his opponent in a forcible entry and detainer suit, the complainant forcibly took possession of the property. Upon this feature of the case the court said (page 216):

> "Is the appellee to be considered as in possession when he commenced suit? He was in the actual possession, but he obtained it unlawfully and forcibly. He cannot take advantage of his own wrongful and illegal acts as a foundation for equitable jurisdiction and relief. The appellee is to be treated as out of possession

> for all the purposes of this suit, so far as jurisdiction is concerned."

In the case of *Miller* v. *Ammon*, 145 U. S., 421, a suit was brought by an individual for the recovery of liquor sold. It appeared upon the trial that the City of Chicago, where the sale took place, required a liquor dealer to procure a license to carry on business, and that the seller had not procured this license. This court held that there could be no recovery, saying:

> "The general rule of law is that a contract made in violation of a statute is void, and that, when the plaintiff cannot establish his cause of action without relying upon an illegal contract, he cannot recover. (Citing cases.) There can be no civil right where there can be no legal remedy. There can be no legal remedy for that which is itself illegal. * * *"

And further, after stating exceptions to the rule, none of which are applicable to the case at bar, this court said:

> "There is, therefore, nothing in the language of the ordinance or the subject-matter of the regulation which excepts this case from the ordinary rule that an act done in disobedience to the law creates no right of action which a court of justice will enforce."

The same rule was laid down in the case of *Diamond Glue Company* v. *United States Glue Company*, 187 U. S., 611, in which this court denied the right of a foreign corporation to recover upon a contract entered into at a time when it had not complied with the foreign corporation laws of the state.

To the same effect is *United States Rubber Company* v. *Butler Bros. Shoe Co.*, 132 Fed., 398, which was a suit by a foreign corporation that had failed to comply with the statute, and the reason for the denial of recovery was based upon the same principle as laid down in *Miller* v. *Ammon, supra.*

Appellant argues that it was no part of the duty of the United States to enforce compliance by a foreign corporation with the laws of a state, but we insist that this contention is without foundation. The underlying proposition is that appellant cannot show that it was first established in business in Illinois except by showing that such establishment was illegal, and when that fact appears a court of equity will not grant to it any relief based thereon.

Bearing in mind the wording of the statute which we have quoted above, let us consider what construction the Supreme Court of Illinois has placed thereon, and how idle it is for appellant to argue as it does as to the effect of this statute, and what other states have held their statutes to mean. This question has been decided in the case of the *United Lead Company* v. *J. W. Reedy Elevator Mfg. Co.*, 222 Ill., 199, cited with approval in *Tennessee Packing & Provision Co.* v. *Fitzgerald* (1908), 140 Ill. App., 430, 435.

This was a case where a foreign corporation had entered into a contract before it had complied with the Foreign Corporation Act, which fact was pleaded in bar, and the foreign corporation insisted that it should merely have been pleaded in abatement, alleging that subsequent compliance with the statute would entitle it to maintain the action. The conten-

tion of the foreign corporation was thus stated by the court, page 201:

> "Appellant's contention is that its right to bring this action is not barred by the statutes; that they merely abate this suit, leaving to the foreign corporation the right to maintain its action if it shall hereafter qualify to transact business in this state."

After citing a previous Illinois case, the court said (p. 202):

> "When the Legislature prohibits an act or declares that it shall be unlawful to perform it, every rule of interpretation must say that the Legislature intended to interpose its power to prevent the act, and as one of the means of its prevention, that the court shall hold it void. This is as manifest as if the statutes had declared that it should be void. * * *"
>
> "The contract upon which this suit was brought having been entered into in this state when appellant was not permitted to transact business in this state is in violation of the plain provisions of the statute, and is therefore null and void, and no action can be maintained thereon at any time, even if the corporation should at some time after the making of the contract qualify itself to transact business in this state by a compliance with our laws in reference to foreign corporations that desire to engage in business here."

It is needless to say that this construction placed upon a statute of the State of Illinois by its own highest court will be followed by this court, and renders wholly inapplicable the decisions which have been cited by appellant.

Appellant further contends that the fact that it

was not authorized to do business in the State of Illinois would not prohibit it from receiving mail addressed to it at the City of Chicago, because, as it contends, it might possibly have established an office in the City of Chicago for the receipt of mail without carrying on business in the state. The futility of this contention as applied to this suit is at once apparent from a reading of appellant's bill, and the allegations therein set forth, which render any suppositions upon this subject wholly unnecessary and beside the question. (*Horn Silver Min. Co.* v. *New York*, 143 U. S., 305, 307; 12 Sup. Ct. Rep., 403, 405.) From appellant's bill it appears, as appellant expressly alleges, that it has been carrying on business in the State of Illinois ever since 1897 (Rec., p. 3) and that mail matter, of the delivery of which it is now complaining, *has been and is being received by it "in the regular course of its said business."* (Rec., p. 3.) It therefore appears that the mail matter involved herein was received as a part of and incident to the illegal conduct of its business in the City of Chicago, and State of Illinois, by this appellant.

Appellee's contention has been considered by Judge Kohlsaat in the trial of this case in the United States Circuit Court for the Northern District of Illinois, Eastern Division, and we take this opportunity to call the court's attention to the language used by him at that time. We quote from 149 Fed., 789-790:

> "It is evident that while there is a slight difference in the names of the two corporations, it is so slight that for all practical purposes

they would be considered practically identical, and in a proper case made for unfair competition the court would have to so direct. It also appears from the bill that some of the mails were addressed without indicating to which company it belongs, whether to one or the other of these two companies, so that, were the prayer of the bill to be granted, the trouble would simply be shifted from the complainant to the defendant. The case is simply one of confusion in the matter of identity of parties to whom mail should be delivered, and in such a case, of course, the party causing the confusion should be charged with the burden of showing that his mail in each case was delivered to the other, so that the only question before the court now necessary to be considered is which one of these parties caused this confusion. It is admitted that the defendant was incorporated before the complainant. It is admitted that at the time it was incorporated complainant was doing business in this state, and had been for several years, but had not complied with the requirements of the statute which prohibits them from doing business in the state until the conditions are met.

"While complainant first used the name Central Trust Company in the State of Illinois, yet that name having been used, and the business being transacted thereunder contrary to the law of the state, no benefit of priority can attach to complainant, and it must be treated as having been entitled to the use of the name only from the time it complied with the requirements of the statute. That being subsequent to the date of the incorporation of the defendant, it follows that complainant itself should be charged with the creation of the confusion, and is in no position to demand the relief sought for in the bill."

III.

APPELLANT DOES NOT COME INTO THIS COURT OF EQUITY WITH CLEAN HANDS.

The facts which we have alleged with reference to the manner in which appellant carried on its business in the City of Chicago, Illinois, of themselves ought to bar it of relief under this well known equitable maxim. Its failure and neglect to take the necessary steps to put persons desiring to organize a corporation under the laws of the State of Illinois upon notice that it was carrying on business in the state, by filing its articles of incorporation with the Secretary of State, and to the serious injury of appellee, is a condition which under this principle should bar the appellant of any relief.

There are other circumstances, however, which in our judgment should bring appellant under the ban of this well known equitable principle. It appears in the decision of the Postmaster-General (Rec., p. 7) that a letter was delivered to Mr. Pfau, president of appellant company, containing remittances sent to protect checks drawn by the sender upon the Central Trust Company of Illinois; that Mr. Pfau opened this letter and, instead of sending it to the postoffice for delivery to appellee or himself making such delivery, he returned it to the sender, thereby jeopardizing the latter's credit.

This ruling by the Postmaster-General also contains an express finding that Mr. Pfau, president and agent of appellant, "well knew that the deposit was intended for the Central Trust Company of Illinois" (Rec., p. 7). The truth of this finding is admitted

by the bill of complaint, for there is nowhere the semblance of an allegation disputing its correctness.

It therefore affirmatively appears that appellant has deliberately abused the privilege which was at one time accorded to it of first receiving mail addressed "Central Trust Company, Chicago, Illinois." Appellant's counsel charitably characterizes it as an act of indiscretion, but the appellant itself in the bill signed and sworn to by this same Pfau, as its president, makes no such excuse. The act remains unexplained; in the face of a full opportunity to avoid its effect, Pfau remains silent. This court can but assume that it was a deliberate and wilful attempt on appellant's part to injure appellee and persons doing business with appellee, and to abuse the privilege of opening mail addressed "Central Trust Company" in such manner as to obstruct the business and work serious injury to appellee and others. We submit that the Postmaster-General would be justified in assuming that such a course of conduct on Pfau's part, acting on behalf of appellant, would be persisted in, and in view of the plain duty of the postmaster to do all in his power to deliver mail to the persons for whom it is intended, it is submitted that he could pursue no other course than he has.

It is an exceedingly grave question if this act on Pfau's part does not bring him and appellant under Section 3892 of the United States Revised Statutes, for the "person to whom it was directed," as used in this statute, means the person for whom intended, and appellant and Pfau could no more knowingly appropriate or "obstruct" a letter which they knew be-

longed to appellee, and which was marked on the outside "Central Trust Company" than he and it could if it were marked "Central Trust Company of Illinois." Intent is to be presumed from the act, and appellant could have no object in returning the letter to the sender except to "obstruct" appellee's correspondence. The Postal Department doubtless considered this act in violation of Section 3892, and we insist that they were right in so holding.

United States v. *Nutt*, Fed. Cas. 15,904.

No complaint is or ever has been made that any mail addressed "Central Trust Company," intended for appellant, and delivered to appellee in the first instance, has not been promptly returned to the postal authorities for delivery to appellee.

A suitor in a court of equity is denied relief when his conduct in respect to the matter in litigation has been inequitable or unconscionable, for in such case he does not come into a court of equity with clean hands.

This rule is well stated by the United States Circuit Court of Appeals for the Eighth Circuit, through Judge Sanborn, in the case of *Michigan Pipe Company* v. *Fremont Ditch Pipe Line and Reservoir Company*, 111 Fed., 284:

> "A suit in equity is an appeal for relief to the moral sense of the chancellor. A court of equity is the forum of conscience. Nothing but good faith, the obligations of duty and reasonable diligence will move it to action. Its decree is the exercise of discretion—not of an arbitrary and fickle will, but of a wise and judicial discretion, controlled and guided by the established rules and principles of equity jurisprudence.

> One of the most salutary of these principles is expressed by the maxims, 'He who comes into a court of equity must come with clean hands,' and 'He who has done iniquity cannot have equity.' A court of equity will leave to his remedy at law—will refuse to interfere to grant relief to—one who, in the matter or transaction concerning which he seeks its aid, has been wanting in good faith, honesty or righteous dealing. While in a proper case it acts upon the conscience of a defendant, to compel him to do that which is just and right, it repels from its precincts remediless the complainant who has been guilty of bad faith, fraud or any unconscionable act in the transaction which forms the basis of his suit."

We refer the court to the following additional cases:

Creath v. *Sims*, 5 How., 192.

Church v. *Proctor*, 66 Fed., 240.

Sullivan v. *Board of Trade*, 111 Ill. App., 492.

Williams v. *Dutton*, 184 Ill., 608.

The line of cases in the Federal Courts which prohibit protection to the holder of a trade mark in cases where he has made misrepresentations with respect to the article sold by him, under such trade-mark, are simply another form of the application of this rule, that he who comes into equity must do so with clean hands.

See

Manhattan Medicine Company v. *Wood* 108 U. S., 218.

The subject-matter of this litigation is mail addressed "Central Trust Company," and we submit

that appellant has been guilty of such unconscionable conduct in that respect (and so decided by the Postoffice Department) as to debar it of any relief in a court of equity.

IV.

APPELLEE IS ENTITLED TO HAVE MAIL SO ADDRESSED DELIVERED TO IT IN THE FIRST INSTANCE UNDER THE LAWS AND REGULATIONS OF THE POSTOFFICE DEPARTMENT.

The power to regulate the postal system has been in a large measure delegated by Congress to the Postmaster-General of the United States. Postal regulations promulgated by him under authority of an Act of Congress have the force of law of which the courts must take judicial notice.

We shall call the court's attention to some of these rules which have a bearing on the matter in dispute. By the Postal Laws and Regulations of 1902, the authority imposed by the Congress in the Postmaster-General is in turn divided by him among Assistant Postmasters-General, who have their designated duties and powers. There is given to the First Assistant Postmaster-General the power of the general management of postoffices and the instruction of postmasters. (Sec. 17, Par. 1.) He has charge of the Division of Correspondence, which has authority, *inter alia*, for the consideration of questions relating to the delivery of mail and "the preparation of decisions as to delivery of ordinary mail, the ownership of which is in dispute." (Sec. 17, Par. 9.)

The whole subject of delivery of mail is very

carefully covered by the rules, and definite instructions, which are rules of conduct for their offices, are imposed upon postmasters throughout the United States. Section 634, Paragraph 3, provides:

> "When a postmaster is in doubt as to the identity of the addressee, he may require proof, and should exercise great care, especially where mail matter appears to be of value, to make proper delivery."

Paragraph 4 thereof provides:

> "Where two or more persons of the same name receive mail at the same office, the postmaster should advise them to adopt some address or means by which their mail may be distinguished. Postmasters will deliver such matter according to their best judgment, and will not return it to the mailing office for better description of the addressee until, after inquiry, they are unable to determine to whom it should be delivered."

Considering this section of the postal laws, before passing to others which we shall present to the attention of this court, we contend, without further elaboration that postmasters when in doubt must act cautiously and only decide after a careful consideration and deliberation of all the facts concerning the delivery of the mail matter. They must exercise "their best judgment." They "may require proof" and "should exercise great care." This calls for no capricious or arbitrary exercise of a postmaster's will, and we insist that he does not and will not act without careful consideration of all the facts. In this case by the allegations of appellant's bill, there are no averments that the post-

master has in any way violated any of these rules, and, in the absence of such positive averment, it is irresistible that such is not the fact.

Section 645 of these rules and regulations, Par. 4, provides:

> "Attempts to secure the mail of an established house, firm, or corporation through the adoption of a similar name should not be recognized. Where disputes arise between individuals, firms, or corporations as to the use of a name or designation, matter addressed to a street, number or building should be delivered according to such address. When not so addressed, the mail will be delivered to the firm or corporation which first adopted the name of the address at that place."

Par. 5, of this same section provides:

> "When in doubt as to the firm or corporation for which any mail matter is intended, and claim therefor is disputed, postmasters will withhold delivery and report the facts and any statements made by either claimant to the First Assistant Postmaster-General, for advice."

This section has a direct bearing upon the matter in dispute, and at this point the court will at once appreciate the force of appellee's contention and will recognize the justice of upholding that a failure to comply with the law will not provide the offender with a legal justification and foundation for claiming its protection and advantage over another who is free from illegality and has at all times complied with the law. To take advantage of this postal rule, appellant has contended that it first established itself in the City of Chicago, and therefore

comes within this postal regulation, no matter whether such establishment was lawful or not. This contention can have no force because appellant cannot take advantage of its own unlawful act. The contending parties in this suit are corporations which depend for their existence and vitality on the states which create them. Appellant is a corporation organized under the laws of the State of South Dakota, and which came to the City of Chicago, State of Illinois, and for over five years prosecuted its regular business there, as it alleges in its bill, without complying with the laws of the State of Illinois. Appellee is a domestic corporation, organized under the laws of the State of Illinois prior in time to appellant, and at all times it has exercised its functions within the spirit and letter of the laws of its creation. We need argue no further on this point, and leave it, with the affirmance of the proposition that the adoption of the name must be a lawful one, and that where, as appellant does in this case, one claims the benefit of this rule he must purge himself of illegality first, or fail of success in his contention.

We wish to call the court's attention especially to paragraph 5 of this section, quoted above, wherein it is said that when the Postmaster is in doubt as to the firm or corporation "for which any mail matter is intended," and claim therefor is disputed, he shall seek the advice of the First Assistant Postmaster-General, and report to him the facts and any statements made by either claimant. We submit that this undoubtedly means that the question which the Postmaster has to decide is *for whom mail matter*

is intended. The Postmaster does not need to open the mail to discover for whom it is intended, yet there may be cases where he cannot decide the question merely from an inspection of the outside of the envelope.

He can, of course, perceive out of the whole quantity of mail matter addressed "Central Trust Company," what proportion is intended for appellant and what for appellee; and in many cases, perhaps in a majority of cases, he can determine from an inspection of the outside of the envelope for whom the letters are intended. If he cannot so ascertain and determine, and is still in doubt, than it is his duty under the law to report the facts and the statements made by either claimant to the First Assistant Postmaster-General for advice.

V.

THE POSTOFFICE DEPARTMENT HAS DECIDED THE QUESTION IN CONTROVERSY AND THE COURT WILL NEITHER OVERTURN SUCH DECISION NOR INTERFERE WITH THE DISCRETION OF THE DEPARTMENT.

Appellant in its bill represents (Rec., p. 6) that within a short time after the incorporation of appellee, appellee made a request of one Coyne, at that time Postmaster in Chicago, that all mail addressed to Central Trust Company, and not having the street address of appellant on the cover, should be delivered to appellee; that in accordance with said request Coyne directed that all mail addressed Central Trust Company, without the street number of the appellant appearing on the outside cover should be delivered to appellee; that said order was made some

time in the autumn of 1902, and that from and after the date of said order various letters addressed to Central Trust Company, and intended for appellant, but having neither the street number of appellant nor appellee upon the outside cover, were delivered to appellee. Proceeding with the allegations of its bill, appellant states that upon the receipt by it of letters so addressed to it, and opened by appellee, appellant made a complaint to the Post Office authorities at the Chicago Post Office, and made a further complaint to the Postmaster-General at Washington, D. C., that letters addressed to it were being delivered to appellee. Appellant alleges that on the 10th day of January, 1903, the Postmaster at Chicago was directed by the Postmaster-General of the United States to deliver all mail addressed "Central Trust Company, Chicago, Illinois," without the addition of the street, number, box or other designation to indicate for whom it was intended, to appellee, and appellant sets up in its bill a copy of the letter of the Postmatser-General transmitting his decision to the Postmaster at Chicago. (Rec., p. 7.) With the exception of the further allegation of appellant (Rec., p. 7) as follows:

> "Complainant further states that it made various efforts to get the order of the Postmaster-General above set forth rescinded, and to have mail addressed Central Trust Company delivered to it, but that said efforts were without avail, and the Postmaster-General declined to rescind said order."

these are all the allegations contained in appellant's bill bearing upon the submission of this question to

the Postmaster-General. The court will notice the absence of any averments of fraud, irregularity or any facts upon which the Postmaster-General could or did base his decision. Also this court will notice that appellant made complaint to the Postmaster-General, and it is fair to insist that presumably appellant made as strong a showing in its favor as was within its power, and if it did not it cannot now complain that the decision of the Postmaster-General was upon insufficient facts. Appellant made various efforts to have the order of the Postmaster-General rescinded, but without success, and again, presumably, it brought forth all the facts favorable to it and cannot complain of their inability to convince that officer that he was wrong. There is no allegation that the Postmaster-General acted fraudulently or under mistake of law or fact, or exceeded his authority. Appellant alleges that it appealed to him for a decision, and then sets forth that decision, and that is all. Counsel for appellant in his brief filed in this court claims that the Postmaster-General exceeded his authority, but the bill contains no such allegation. It goes for naught that he now so contends, since appellant has not pleaded any such facts showing that the Postmaster-General exceeded his authority, and in what way he did so. Right at this point, we submit that if the decision of the Postmaster-General was not based on sufficient facts, and these facts or the lack of them does not appear by the allegations of appellant's bill, how could this court, even if it saw fit to review the Postmaster-General's decision, determine whether he was right or wrong?

In the case of *Appleby* v. *Cluss*, 160 Fed., 984, the Circuit Court of the United States for the District of New Jersey decided that a bill in equity cannot be maintained in a Federal Court to enjoin the enforcement of a fraud order made by the Postmaster-General, unless it makes a clear *prima facie* case that the facts adduced before him could not possibly support such order, or that complainant's legal or constitutional rights had been violated, and that such a bill is insufficient where it shows a hearing upon due notice on charges of fraud clearly within the statute, but does not show what proofs were adduced. We quote from the language of Judge Lanning, page 985:

> "It is true that all facts well averred in the bill must, inasmuch as the present hearing is on a demurrer to the bill, be deemed true. But a Federal Court will not weigh the facts adduced before the Postmaster-General in order to determine whether the court's judgment on the facts will agree with his. It will only look into these facts for the purpose of determining whether in any aspect of the case they are covered by any Act of Congress or support a conclusion of fraud. The Postmaster-General is the head of one of the Executive Departments of the Government, and his acts will not be interfered with by the judicial department except upon proof of some legal error on his part.
>
> "In the present case, the bill of complaint fails utterly to show what facts were before the Postmaster-General. There is an averment that the complainant Appleby submitted an affidavit, a copy of which is annexed to the bill, but there is no averment that other proofs were not before the Postmaster-General, or that the complainants have no knowledge of the produc-

> tion of other proofs before him, or that having no knowledge of other proofs before him they applied to him for a copy of or a statement concerning the nature of the proofs. * * * A due regard for an order of an executive department of the government demands that the judicial department shall not require the head of that executive department, or any of his subordinate officials, to answer a bill in equity, the purpose of which is to secure a decree which in effect annuls the order, unless the bill makes a clear *prima facie* case that the facts adduced before the executive department could not possibly support the order, or that the complainant's legal or constitutional rights have been violated."

Appellant contends that in the exercise of functions imposed by law upon him, the Postmaster-General did not exercise any discretion, but merely acted ministerially, and cites in support of this contention cases far beside this question. Having proper consideration for the patience of this court, we refrain from entering into any extended argument as to whether or not the decision of the Postmaster-General in this case was an exercise of discretion as opposed to a mere ministerial act, and will content ourselves with a reference to a case recently decided by this court:

> *National Life Ins. Co. of United States of America* v. *National Life Ins. Co.*, 209 U. S., 317; 28 Sup. Ct. Rep., 541,

which was another dispute about mail matter, and where the appellant sought to overturn the decision of the Postmaster-General which he had rendered

in regard to the matter in dispute. This court, speaking through Mr. Justice Peckham, said:

> "The appeal made by the complainant to the Department was really nothing but an appeal to its discretion. * * * Assuming that the court in some cases has the power to, in effect, review the determination of the Department, we do not think this is an occasion for its exercise. The complainant is really appealing from the discretion of the Department to the discretion of the court, and the complainant has no clear legal right to obtain the order sought. See *Bates & Guild Co.* v. *Payne*, 194 U. S., 106-108; 24 Sup. Ct. Rep., 595.
>
> "A court in such case ought not to interfere in the administration of a great Department like that of the Postoffice by an injunction which directs the Department how to conduct the business thereof, where the party asking for the injunction has no clear right to it.
>
> "This case has nothing in common with *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S., 94; 23 Sup. Ct. Rep., 33. There the Postoffice Department was assuming to act under a statute giving it the power to refuse to deliver mail matter to an individual guilty of fraud in his business, and this court held that the case made did not show that the plaintiff in error had been guilty of any conduct that could be held to be a fraud under the statute under which the Postoffice Department was acting. The Department was, therefore, without jurisdiction to make the order, which was reversed in this court."

The *National Life Insurance Company* case, instituted in the United States Circuit Court for the Northern District of Illinois, Eastern Division, was decided by Judge Kohlsaat, and was appealed there-

from to the United States Circuit Court of Appeals for the Seventh Circuit, which two courts have passed upon the case now before the court. Appellant in the *National Life Insurance Company* case was unsuccessful, as the appellant in this case has been, in convincing the courts of their error.

In view however of the fact that the appellant appears to derive much comfort from that case we desire to call the attention of the court to a few of the essential differences between that case and the case at bar. In that case there were two corporations: One, the National Life Insurance Company, a Vermont corporation, and the other the National Life Insurance Company of the United States of America, an Illinois corporation. The postmaster directed that all mail addressed National Life Insurance Company, Chicago, Illinois, should be delivered to the Vermont corporation, and the Illinois corporation filed a bill to compel the delivery of such mail matter to it. Among numerous other differences between that case and this are the following:

1. The Vermont corporation was lawfully admitted to do business in Illinois in 1860, while the Illinois corporation was not organized until 1904, although its predecessor was admitted to do business in the State of Illinois in 1868. The Vermont corporation established its Chicago office in 1868, the predecessor of the Illinois corporation in 1874.

2. It therefore appears that the Vermont corporation was first admitted to do business in the State of Illinois, and first established an office in the City of Chicago, and that both the admission to

do business and the establishment of such office were lawful.

3. From the time of the establishment of the office of the Vermont corporation in the City of Chicago, up to the year 1905, substantially all mail matter addressed simply National Life Insurance Company, was delivered to the Vermont corporation, without complaint in reference thereto by the Illinois corporation or its predecessor, such complaint only being made in the year 1905, when the Illinois corporation established its general offices in the City of Chicago, and thereby its mail matter was very largely increased.

4. There was no claim whatever of the exercise of bad faith by the Vermont corporation with respect to mail matter received by it, but which was in fact intended for the Illinois corporation.

There is however one *striking simularity* between that case and the case at bar. In that case as in this the court refused to overturn the finding or interfere with the discretion of the Postoffice Department.

Mr. Justice Peckham, in the course of the opinion of the court, refers to *Bates & Guild Co.* v. *Payne*, 194 U. S., 106; 24 Sup. Ct. Rep., 595, and we take the liberty to quote therefrom, invoking the patience of the court for this transgression, and praying indulgence because of the appropriateness of the language used by Mr. Justice Brown:

> "Conceding the principle established in the two cases just decided to be that the fact that books published at stated intervals and in consecutive numbers do not thereby become periodicals, even though in other respects they conform to the requirements of paragraph 14, cases

may still arise where the classification of a certain publication may be one of doubt. Such is this case. But we think that, although the question is largely one of law, determined by a comparison of the exhibit with the statute, there is some discretion left in the Postmaster-General with respect to the classification of such publications as mail matter, and that the exercise of such discretion ought not to be interfered with unless the court be clearly of opinion that it was wrong. The Postmaster-General is charged with the duty of examining these publications and of determining to which class of mail matter they properly belong; and we think his decision should not be made the subject of judicial investigation in every case where one of the parties thereto is dissatisfied. The consequence of a different rule would be that the court might be flooded by appeals of this kind to review the decision of the Postmaster-General in every individual instance."

The court then said with reference to the *McAnnulty* case:

"In the case of *American School of Magnetic Healing* v. *McAnnulty*, the postoffice authorities were held to have acted beyond their authority in rejecting all correspondence with the plaintiff upon the subject of the treatment of diseases by mental action; but while it was said in that case that the question involved was a legal one, it was intimated that something must be left to the discretion of the Postmaser-General. It has long been a settled practice of this court in land cases to treat the findings of the Land Department upon questions of fact, as conclusive, although such proceedings involve to a certain extent the exercise of judicial power. * * * But there is another class of cases in which the rule is somewhat differently, and perhaps more broadly, stated, and that is, that where Con-

> gress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involve questions of law or fact, will not be reviewed by the courts unless he has exceeded his authority or this court should be of opinion that his action was clearly wrong."

After citing from the *Hitchcock* case, *postea*, the court continued:

> "The rule upon this subject may be summarized as follows: That where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing.
>
> "Upon this principle, and because we thought the question involved one of law rather than of fact, and one of great general importance, we have reviewed the action of the Postmaster-General in holding serial novels to be books, rather than periodicals; but it is not intended to intimate that in every case hereafter arising the question whether a certain publication shall be considered a book or a periodical shall be reviewed by this court. In such case the decision of the postoffice department, rendered in the exercise of a reasonable discretion, will be treated as conclusive."

The correct rule of law applicable to such a situation is given strong expression in the case of *United States of America* v. *Hitchcock*, 190 U. S., 316; 23 Sup. Ct. Rep., 698, wherein this court, speaking through Mr. Justice Brewer, said:

> "Neither an injunction nor mandamus will lie against an officer of the Land Department to control him in discharging an official duty which requires the exercise of his judgment and discretion. * * * That the decision of the questions presented to the Secretary of the Interior was no merely formal or ministerial act is shown beyond the necessity of argument by a perusal of the foregoing statement of the issues presented by this record for the decision of the Secretary. Whether he decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under these circumstances to review his determination by mandamus or injunction. The court has not general supervisory power over the officers of the Land Department by which to control their decisions upon questions within their jurisdiction."

Appellant's bill contains no averments from which this court can decide that the Postmaster-General was guilty of a clear and gross mistake of fact or law, or that he acted beyond his authority in an arbitrary and unfounded manner. The reasons upon which the Postmaster-General based his decision do not appear in appellant's bill, and even if they did so appear are of no consequence to this court.

In the case of *United States ex rel. Parish* v. *MacVeagh, Secretary of the Treasury*, 214 U. S., 124; 29 Sup. Ct. Rep., 556-7, decided by this court during the last term thereof (May 17, 1909), this court, speaking through Mr. Justice McKenna, said:

> "If that officer had the power, which he asserts in his return, to review the evidence taken in the Court of Claims and to 'make such find-

> ings' as might 'seem right and proper to him,' the judgment of the Court of Appeals must be affirmed. As we may not control the Secretary's discretion (*United States ex rel. Riverside Oil Company* v. *Hitchcock*, 190 U. S., 316; 23 Sup. Ct. Rep., 698), we can have no concern with the reasoning advanced by him to support its exercise."

We do not wish to close this branch of our argument without calling to the court's attention the character of relief sought by the appellant. We insist that the relief demanded is unique, and absolutely without precedent to sustain it.

The appellant does not claim that there is some specific piece of mail matter in the postoffice belonging to it which is claimed by the appellee, and seek to have the right adjudicated between it and the appellee as to that specific piece of mail matter. The appellant simply alleges in its bill in substance that persons dealing with it and persons dealing with the appellee are in the habit of addressing mail matter to both the appellant and the appellee under the name "Central Trust Company." It concedes that much of such mail matter is not intended for it but is in fact intended for and belongs to the appellee. It asks this court to tie the hands of the Postmaster for all the time in the future, not by an adjudication of this court as to some specific piece of mail matter, the title to which could be determined by this court, but by laying down a rule of conduct that shall forever control the Postmaster in the disposition which he shall make of mail matter addressed "Central Trust Company." It seeks to enjoin the Postmaster from delivering to the appel-

lee any mail so addressed, and the appellee from receiving the same.

Manifestly no such relief as this could be granted because much of the mail matter it is conceded belongs to the appellee, and the Postmaster would be *ultimately* bound to deliver it to the appellee, even if he were under the first duty of delivering it to the appellant. What the appellant desires and really seeks to accomplish, although it is not the prayer of its bill of complaint, is a mandatory order from this court to the Postmaster laying down this rule of conduct to guide him at all times in the future, viz.,

> "All mail matter addressed Central Trust Company, irrespective of what knowledge or information you may have or be able to procure as to whom the same really belongs, we hold, as a matter of law, belongs and must be delivered to the appellant."

The effect of a perpetual injunction based upon the facts as alleged in appellant's bill would be to set aside the rule and decision of the Postmaster-General (conceding that it is properly raised in appellant's bill), and substitute therefor the discretion of this court as to the delivery of mail addressed "Central Trust Company, Chicago, Illinois." This injunction would absolutely prevent the further exercise of discretion by the Postmaster-General, and would prevent the Postmaster from delivering mail in the future to appellee, even though the Postmaster-General, upon a consideration of the question, should decide that the mail so addressed was intended for appellee; "the trouble would simply be

shifted from the complainant to the defendant." But will the court grant such relief?

The Postal Rules clearly contemplate that the Postmaster shall make delivery of mail to the persons for whom it is intended; that in cases of doubt he shall use his best judgment and discretion towards accomplishing that act as nearly as possible. He will, in cases of doubt, "make inquiry"; he may "require proof," and should "exercise great care." If, under the law, it is a matter of discretion with the Postmaster what right has this court to overturn that discretion and to absolutely forbid the Postmaster from exercising such discretion as occasion may arise therefor in the future? Will this court forbid the Postmaster to "make inquiry," to "require proof," and not only exonerate him from exercising care to deliver mail to the person intended, but, in addition, absolutely forbid him from exercising such care? An injunction, such as prayed for, would compel the Postmaster to deliver to appellant a letter addressed Central Trust Company, although indisputable proof was submitted that it belonged to appellee.

As to letters addressed "Central Trust Company," and directed to the Corner of Monroe and La Salle streets in Chicago, Illinois, no facts are presented sufficient to entitle the appellant to any relief in that regard. Appellant states (Rec., p. 8) that many such letters have been delivered by the Postmaster to appellee, and that appellee has opened the same; that appellee is now claiming all mail so directed, and is endeavoring, as appellant believes, to have the Postmaster of Chi-

cago deliver to it all mail so directed, and further appellant states (Rec., p. 9) that appellee Busse is about to continue delivering all mail addressed to "Central Trust Company," without the street address of this complainant upon the same, and all mail directed to "Central Trust Company, Corner of La Salle and Monroe streets, Chicago, Illinois," to appellee, and that appellee is about to receive and open the same. But appellant does not allege, as it alleges in regard to the mail addressed "Central Trust Company," *that it has requested the Postmaster to deliver to it mail addressed to the Corner of Monroe and La Salle streets, in Chicago, and that said Postmaster Busse has declined said request*, and yet, in the absence of these allegations, appellant asks this court to grant to it a perpetual injunction against appellee and said Postmaster Busse. So preposterous is this claim that we will not dwell upon its consideration further than to call to the attention of this court the opinion given in this case *per curiam*, by the United States Circuit Court of Appeals for the Seventh Circuit, reported, 152 Fed. Rep., 427 (Rec., p. 30):

> "Appellant's bill, in our opinion, is bottomed on its asserted right to have delivered to it all mail addressed 'Central Trust Company, Chicago, Illinois.' There is no allegation of the Postmaster's refusal to deliver to appellant the mail specifically addressed to its business rooms. An injunction should not issue on the bare fact that such mail may inadvertently have been delivered to the appellee company. In such instances the appellee company should at once return that mail unopened to the Postmaster for prompt delivery to appellant."

We insist that appellant can not be heard in this court praying for a perpetual injunction against the Postmaster at Chicago, where it has not alleged that it has even requested him to deliver to it mail addressed to the Corner of La Salle and Monroe streets in said city, and that this court would not be justified in granting an injunction where there is such an absence of affirmative allegation.

VI.

THE APPELLANT HAS MISCONCEIVED ITS REMEDY.

We submit that the appellant has misconceived its remedy, if it had any. It seeks in its bill of complaint an injunction to prevent the appellee from receiving and the postmaster from delivering to it mail addressed "Central Trust Company." This manifestly is not what the appellant desires, or what, even conceding all its contentions, it would be entitled to, under any circumstances. It would not, even if its contentions were true, be entitled to have the Central Trust Company enjoined from receiving and the postmaster from delivering to it mail addressed Central Trust Company; it would only be entitled to have such mail first delivered to the appellant. What the appellant desires is not to prevent the Central Trust Company from receiving mail, or the postmaster from delivering mail to it; that is a matter with which the appellant has no concern; but it desires that the postmaster shall be affirmatively required and directed by this court to first deliver to the appellant all mail addressed "Central Trust Company." What the

postmaster shall do with the mail after it has been delivered to the appellant and it is discovered that it does not belong to it, is a matter with which the appellant has no concern. That is a subject in which the postmaster and the appellee alone are concerned.

The appellant insists that as a matter of law it is the affirmative duty of the postmaster to thus deliver mail to it. The duty, if it exists, is specific and affirmative. If it exists at all, it is a matter in which the postmaster has no discretion; for if he has discretion, this court cannot control it. The proper and appropriate remedy for the enforcement of a specific and affirmative duty imposed upon a public officer is a proceeding by way of mandamus—not an injunction. An injunction forbids; a mandamus commands, and it is a command that the appellant seeks in this case.

It is true that in some cases mandatory injunctions are issued by the court, but we submit that no case will be found in which a mandatory injunction has been issued in a case of this kind. It is also true that the courts in fraud order cases, where there has been a plain mistake of law, have enjoined the postmaster from carrying out the order of the postmaster general, but that is a specific proceeding to set aside the finding and order of the postmaster general, and in none of those cases was the appropriateness of the proceedings brought in question. It is somewhat enlightening as to the character of the proceeding that in a subsequent reference to the *McAnnulty* case the Supreme Court referred to it as a mandamus proceeding. (See the *Hitchcock* case, *supra.*) The mere general state-

ments by the courts in these cases that the complainant was without remedy at law cannot be considered as entitled to any weight when the question was nowhere suggested, that there was in fact an appropriate remedy by mandamus. Courts may (but only infrequently) raise of their own motion the defense of an adequate legal remedy. If the finding and order of the Postmaster General in this case were set aside, the matter would be left exactly where it was before, namely, the postmaster would determine and exercise his discretion, or might determine (wrongfully, if you please) that the mail should be first delivered to the appellee.

In the case of *Boardman* v. *Thompson*, 12 Fed., 675, a bill was filed seeking an injunction to prohibit a postmaster of the United States from refusing to deliver registered letters and letters containing money orders, and other matter addressed through the mail, on which postage had been prepaid. Judge Matthews, with whom Justice Barr concurred, said:

> "In my opinion there is no such jurisdiction. If the alleged right exists to require by judicial process the performance of such a duty on the part of a public officer towards a private individual, then it is a legal right, the specific enforcement of which is the proper function of a mandamus, or replevin for the recovery of the possession of the articles, or an action for damages against the officer. There is no sufficient ground for the interference of equity. If, on the other hand, a postmaster is responsible only to his political superior, and amenable to the law only for such breaches of duty as it has defined, and by the means it has provided, as by indictment and punishment, and removal from office, then the present grievance is as much

> withdrawn from the jurisdiction of a court of equity as from the ordinary course of the common law. It is quite certain that a perpetual injunction in the terms prayed for could not lawfully be granted, for the postmaster might be lawfully required by the Postmaster General to withhold from delivery correspondence with a named party, believed by him to be engaged in a forbidden business; and an injunction, for each instance in which it might be shown that no such prohibition existed, would be but an equitable replevin, without the justification of preventing a multiplicity of actions."

So in this case what is sought as we have above pointed out is not an injunction relating to a specific piece of mail matter, but an order of this court laying down a rule of conduct to guide the postmaster for all time in the future, without reference to the facts or circumstances which may arise, and which he would be entitled to consider in determining for whom specific mail matter was intended and without exercising his discretion as to the manner in which such mail matter should be delivered.

It will doubtless be said that the United States Circuit Courts have no original jurisdiction to issue writs of mandamus, and that therefore the appellant would be without remedy if compelled to resort to that proceeding.

But it is not true that the appellant would be without remedy by way of mandamus. The courts of the District of Columbia have full power and authority to issue writs of mandamus, and a proceeding may be brought in that court against the Postmaster General, who has entire charge and super-

vision over all matters relating to the mails, and in that proceeding the court could, if the appellant showed itself to be entitled thereto, issue a writ of mandamus directed to the Postmaster General. The Postmaster General is the proper person to be a defendant to such proceeding, because it is under his direct command and authority that mail matter is being delivered at the present time, and the appellant seeks *a judicial direction that the Postmaster shall disobey the order of his superior officer.* That the courts of the District of Columbia have such jurisdiction is settled beyond question by the following cases:

Kendall v. *United States,* 12 Peters, 524.
United States v. *Schurz,* 102 U. S., 378.
United States v. *Black,* 128 U. S., 40.

A recent case where a writ of mandamus was awarded against the Postmaster General is that of *U. S.* v. *Cortelyou,* 26 App. D. C., 298.

But whether the relief be by way of injunction or mandamus the proceeding should be directed against the responsible superior officer under whose orders the Postmaster is acting, and not against the subordinate who is merely carrying out his commands.

We, therefore, submit that this court of equity, for the various reasons which we have set forth, is without jurisdiction to grant the relief prayed for, based upon the allegations in appellant's bill of complaint, and that appellant is not entitled to this relief. This court will not review the discretion exercised according to law by the head of an executive department of the government, where such officer has not

arbitrarily exceeded the extent of his powers, and where there has been no grievous mistake of law and fact, so set up in the bill of complaint that therefrom this court can so adjudge. Upon these and the other considerations which we have submitted, the decrees of the Circuit Court of Appeals and the Circuit Court sustaining appellee's demurrer and dismissing appellant's bill for want of equity should be approved by this court.

Respectfully submitted.

PAM & HURD,

Solicitors for Central Trust Company of Illinois and William R. Dawes, Appellees.

MAX PAM,
STEPHEN A. DAY,
Of Counsel.

CENTRAL TRUST COMPANY *v.* CENTRAL TRUST COMPANY OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 86. Argued January 18, 1910.—Decided February 21, 1910.

The management of the post office business has been placed by Congress in the hands of the Postmaster General and his assistants, and the Postal Laws and Regulations provide for the delivery of mail where two or more persons of the same name receive mail at the same post office.

While the benefit of one's legal name belongs to every party, individual or corporation, it may at times be necessary and proper to look beyond the exact legal name to the name by which a party is customarily known and addressed in order to properly deliver mail to the person to whom it is addressed.

The findings of fact by officers in charge of the several departments of the Government are conclusive unless palpable error appears.

In this case the First Assistant Postmaster General having made an order directing delivery of mail addressed to Central Trust Company, Chicago, to the Central Trust Company of Illinois instead of to a South Dakota corporation having the name Central Trust Company, *held* that there was not enough clear right shown by the latter company to justify the setting aside of the order by the court.

152 Fed. Rep. 427, affirmed.

ON June 22, 1906, the Central Trust Company, a corpora-

tion engaged in the mining, promoting, real estate and trust business, filed its bill in the Circuit Court of the United States for the Northern District of Illinois to compel the defendant, Frederick A. Busse, postmaster at Chicago, to deliver to it certain mail-matter which it claims it was entitled to receive and which he wrongfully delivered to the defendant the Central Trust Company of Illinois. Demurrers to the bill were filed, which were sustained, and the bill dismissed. On appeal to the United States Circuit Court of Appeals for the Seventh Circuit the decree of dismissal was affirmed, and thereupon the case was brought here on appeal.

The allegations in the bill are that on or about April 17, 1897, the complainant was created a corporation by the State of South Dakota under the name and title of "Central Trust Company," and was authorized by said State to establish an office and hold directors' meetings in Chicago; that on or about that date it established an office in Chicago on the corner of Monroe and La Salle streets, and began to carry on its business, though without any express authority from the State of Illinois, and continued to do so up to and including February 7, 1903; that in August, 1902, it applied to the Secretary of State of Illinois for a license to do business within that State, and complied with all the statutory requirements for foreign corporations desiring to do business within the State; that owing to a contest made before the Secretary of State by the Central Trust Company of Illinois the granting of said license was delayed until February 7, 1903, at which time it was granted, and that from that date complainant has continuously conducted its business in Chicago at the office and under the above stated name; that ever since its coming to Chicago it has received through the post office a large amount of mail matter addressed to it by simply its name.

The bill further alleges that the defendant, the "Central Trust Company of Illinois," is a corporation chartered by the State of Illinois on or about July, 1902, and engaged in a general banking and trust business at No. 142 Monroe street, in

Chicago; that its first place of business was at the corner of Dearborn and Monroe streets, but about the beginning of the year 1906 it removed to No. 142 Monroe street, where it has ever since remained.

The bill still further alleges that from 1897 to 1901 the name of complainant appeared in the Lakeside directory, a directory of general circulation in Chicago and recognized as a reliable and authoritative publication; that while its name was omitted from the directory for 1902, the omission was due to a mere error by the publishers of the directory, and was through no fault of the complainant; that said directory for 1902 was not published and issued until after defendant, the Central Trust Company of Illinois, had filed its articles of incorporation.

It also appears that complaint having been made to the Postmaster General of the action of the postmaster at Chicago in reference to the delivery of the mail received at Chicago, an order was made by the First Assistant Postmaster General in these words:

"January 10, 1903.

"The Postmaster, Chicago, Ill.:

"Sir: I am in receipt of information to the effect that a letter was delivered to Mr. Pfau, a representative of the Central Trust Company of South Dakota, which contained remittances intended to protect checks drawn on the Central Trust Company of Illinois; that Mr. Pfau, instead of returning the letter promptly to the post office for delivery to the Trust Company for which it was intended, returned it to the sender, thereby jeopardizing his credit. Mr. Pfau well knew that the deposit was intended for the Central Trust Company of Illinois.

"You are hereby directed to deliver mail addressed 'Central Trust Co., Chicago, Ill.,' without the addition of the street, box or other designation to indicate that it is intended for the South Dakota Company, to the Central Trust Company of Illinois, and request that company to return to you promptly for delivery to the Central Trust Company of South Dakota all

letters falling into their hands intended for the company represented by Mr. Pfau.

Very respectfully,
(Signed) R. J. WYNNE,
First Assistant Postmaster General."

The prayer of the bill is that the defendant Busse be restrained "from delivering mail addressed 'Central Trust Company' without the street address of this complainant thereon, or some other mark thereon indicating for whom the same is intended, or with the street address 'corner of La Salle and Monroe streets,' to the defendant Central Trust Company of Illinois," and restraining the Central Trust Company of Illinois and its cashier, the defendant William R. Dawes, from receiving and opening said mail so described.

Mr. W. H. Sears, with whom *Mr. Daniel McCaskill* and *Mr. O. L. McCaskill* were on the brief, for appellant:

The decision of the Postmaster General giving the mail in controversy to the Central Trust Company of Illinois is reviewable by this court. The act is ministerial in character.

If the act were official, requiring the exercise of judgment and discretion, the decisions would be final and not reviewable by the courts. If, on the other hand, it is ministerial in character, he may be compelled to perform it. *Kendall* v. *United States*, 12 Pet. 524, 614; *New Orleans Bank* v. *Merchant*, 18 Fed. Rep. 841, 850; *Mississippi* v. *Johnson*, 4 Wall. 475, 488; *Teal* v. *Fenton*, 12 How. 284, 291.

This obligation is recognized in the postal regulations, and provision is made for complying with the decrees of court concerning the delivery of mail. Postal Laws and Reg., 1902, § 653, p. 313; and see *Nat'l Life Ins. Co.* v. *Nat'l Life Ins. Co.*, 209 U. S. 317.

In this case not only is all of the mail addressed in the name of appellant, but part of it has the street number of appellant on it. The postmaster has no right to open the mail or au-

thorize others to open it to ascertain its contents. By so doing he subjects himself to a penalty. *In re Jackson*, 96 U. S. 727, 733; *United States* v. *Mathias*, 36 Fed. Rep. 892, 896; *United States* v. *Eddy*, 1 Bissel, 227, 228.

All the postmaster has a right to do under the law in determining for whom mail is intended is to look at the cover of the mail. The postmaster is no more at liberty to act upon mere guesses or surmises than a private agent. The rule that the discretion of an executive officer will not be disturbed presupposes that information upon the matter upon which judgment and discretion are invoked is presented to the officer for consideration, or that knowledge respecting them is possessed by him. *United States* v. *Barlow*, 132 U. S. 280; *School of Magnetic Healing* v. *McAnulty*, 187 U. S. 94, 107, 109.

Where the act of a head of a department is beyond the scope of his authority such act is subject to review by the courts and any person who will sustain injury by such act may enjoin it. *Noble* v. *Union River Logging R. R.*, 147 U. S. 165, 171, 172; *Board of Liquidation* v. *McComb*, 92 U. S. 531, 541; *Public Clearing House* v. *Coyne*, 194 U. S. 497, 509; *Bates & Guild Co.* v. *Payne*, 194 U. S. 106, 108; *Brown* v. *United States*, 9 How. 487; *Payne* v. *Nat'l Ry. Pub. Co.*, 20 App. D. C. 581.

The Post Office Department cannot act arbitrarily and do as it likes with the mail. If it has any right to refuse to accept or to refuse to deliver mail except to the addressee that right must come from some law of Congress. *School of Magnetic Healing* v. *McAnulty*, 187 U. S. 94, 109. The Postmaster General can exclude letters from the mail only where the mail is being used for certain prohibited purposes, as where the mail matter is obscene, 25 Stat. 187, 496, or where the letters concern lotteries, gift enterprises and schemes to defraud and obtain money by false pretenses. Rev. Stat., § 3894. Congress has also authorized the Postmaster General to classify the mail matter, and he may refuse to carry mail except under its proper class. *Houghton* v. *Payne*, 194 U. S. 88. In no other case has any authority been given him to exclude or to refuse

to deliver mail except to the addressee. Under §§ 3890, 3892, Rev. Stat., however, he must deliver the mail to the addressee.

Appellant's failure to file its certificate of incorporation does not affect the issues of this case. The law requiring certificates to be filed was not passed until after appellant had established its office, and subsequently appellant complied with all the requirements of this law. 4 Starr & Curtiss' Ill. Rev. Stat., 310.

The state statute does not say a foreign corporation shall be deprived of all rights to its mail until it files its charter, and if it did it would be assuming powers which belong to the Federal Government alone. A State may forbid a foreign corporation to do business within its boundaries, but it cannot forbid it the right of the mails. As to what is doing business see *Bradbury* v. *Waukegan & Washington M. Co.*, 113 Ill. App. 600, 607; *Boardman* v. *S. S. McClure Co.*, 123 Fed. Rep. 614; *Caldwell* v. *North Carolina*, 181 U. S. 622; Thompson on Corporations, § 7936.

Where a foreign corporation makes a contract within a State before filing its articles of incorporation and subsequently files its articles the contract may be enforced; the remedy is merely suspended until the law has been complied with. 7 Am. & Eng. Enc. of Law, 2d ed., 875–876; *Caesar* v. *Capell*, 83 Fed. Rep. 403, 423; *Wood Mowing Co.* v. *Caldwell*, 54 Indiana, 270, 281; *Carson-Rand Co.* v. *Stern*, 129 Missouri, 381; *Neuchatel Asphalt Co.* v. *Mayor*, 155 N. Y. 373; *Behler* v. *German Mut. Fire Ins. Co.*, 68 Indiana, 347, 355; *Crefeld Mills* v. *Goddard*, 69 Fed. Rep. 141, 142.

These cases take a somewhat different view from *United States Lead Co.* v. *Elevator Mfg. Co.*, 222 Illinois, 199, where such a contract was held void *ab initio*, and see *Ottoman Co.* v. *Dane*, 95 Illinois, 203; *Grand Lodge* v. *Graham*, 96 Iowa, 592.

The courts of Illinois have held in numerous cases that where there is a valid corporation law, and a user by a corporation of the powers intended to be granted by the corporation law, a mere failure to file articles of incorporation with the Secretary of State, or otherwise comply with some of the statu-

tory regulations, cannot be taken advantage of by third parties collaterally. The corporation is held to have a *de facto* existence of which it can be deprived only in a direct proceeding by the State. *Tarbell* v. *Page*, 24 Illinois, 46, 48; *Thompson* v. *Candor*, 60 Illinois, 244, 247, 248; *Cin., LaF. & Chi. R. R. Co.* v. *D. & V. Ry. Co.*, 75 Illinois, 113, 116; *The People ex rel.* v. *Trustees of Schools*, 111 Illinois, 171, 173; *Hudson* v. *Green Hill Seminary*, 113 Illinois, 618, 624.

Numerous States have passed laws making it essential for foreign corporations to file their articles of incorporation to hold real estate within the State. But where the corporations have purchased lands within those States before filing their articles it was held that the State alone could take advantage of their failure. No other corporation could preëmpt the land or confiscate it to its own use on the theory that it was not owned by the foreign corporation. The latter could pass good title to land so taken and held by it, and could maintain an action for trespass upon it. *Seymore* v. *Slide & Spur Gold Mines*, 153 U. S. 523; *Fritts* v. *Palmer*, 132 U. S. 282, 291; *Whitman Mining Co.* v. *Baker*, 3 Nevada, 386; *Carlow* v. *Aultman*, 28 Nebraska, 672, 676; *Sherwood* v. *Alvis*, 83 Alabama, 115.

Where a State requires registration by a foreign corporation doing business within the State, and imposes a penalty for noncompliance with the statute, it shows that, in the mind of the state legislature, the penalty is sufficient to accomplish the desired result, and is exclusive of all other remedies. Cases *supra*, and *Sherwood* v. *Alvis*, 83 Alabama, 115, 119; *State Mut. Ins. Assoc.* v. *Brinkley Co.*, 61 Arkansas, 1, 6; *Kindel* v. *Beck Lithographing Co.*, 19 Colorado, 310, 314; *Union Mut. Ins. Co.* v. *McMillen*, 24 Ohio St. 67, 79; *Garrott Ford Co.* v. *Vermont Mfg. Co.*, 20 R. I. 187, 189; *Toledo Tie Co.* v. *Thomas*, 33 W. Va. 566, 570.

Mr. Max Pam, with whom *Mr. Stephen A. Day* was on the brief, for appellee:

First: The name "Central Trust Company" so designates appellee as to justify the postmaster in making delivery to appellee of mail so addressed.

The proposition that a corporation cannot be designated, known by and receive letters, conveyances or grants unless its corporate name is in all respects fully and accurately set forth is untenable. *Chadsey* v. *McCreery*, 27 Illinois, 253; *Board of Education* v. *Greenebaum Sons*, 39 Illinois, 609; *Clement* v. *City of Lathrop*, 18 Fed. Rep. 885; 7 Am. & Eng. Enc. of Law, 2d ed., p. 687; Cl. 10, § 634, Postal Reg. of 1902, applies to corporations as well as individuals.

The rights of the appellee to the use of the name in question were prior to those of the appellant.

Appellant concedes that it did not comply with the statute requiring it to file its certificate, Supp. (1902), Starr & Curtiss, Ann. Stat. Ill., Ch. 32, Par. 52, 53, 54, until after the incorporation of the appellee; as to effect of this, see Hurd's Rev. Stat. Ill., Ch. 32, §§ 28½, 50; *Illinois Watch Case Co.* v. *Pearson*, 140 Illinois, 423, 429.

Appellant does not come into court with clean hands; it has been guilty of such unconscionable conduct in that respect, and so decided by the Post Office Department, as to debar it of any relief in a court of equity.

Appellee is entitled to have mail so addressed delivered to it in the first instance under the laws and regulations of the Post Office Department.

Postal regulations promulgated by the Postmaster General under authority of an act of Congress have the force of law of which the courts must take judicial notice.

The Post Office Department has decided the question in controversy and the court will neither overturn such decision nor interfere with the discretion of the department. *Appleby* v. *Cluss*, 160 Fed. Rep. 984; *Nat'l Life Ins. Co.* v. *Nat'l Life Ins. Co.*, 209 U. S. 541; and see also *United States* v. *Hitchcock*, 190 U. S. 698.

Appellant has misconceived its remedy. It is not entitled to

injunction. In no event could it be entitled to any relief except that of mandamus.

MR. JUSTICE BREWER, after making the foregoing statement, delivered the opinion of the court.

The management of the great post office business of the country is placed in the hands of the Postmaster General and assistants. Rev. Stat., §§ 388, 389, 396. In the discharge of his duties as Postmaster General he has assigned to the First Assistant Postmaster General "the preparation of decisions as to delivery of ordinary mail, the ownership of which is in dispute." Postal Laws and Regulations, 1902, § 17, par. 9. The question here presented is whether the First Assistant Postmaster General, having directed the postmaster at Chicago to deliver to the "Central Trust Company of Illinois," defendant herein, mail-matter addressed "Central Trust Company, Chicago, Ill.," without any further designation of the party for whom it was intended, the courts are, upon the facts as presented, justified in setting aside that order and directing the delivery of such mail to the complainant. It is not always easy to determine for whom a letter is intended. In furtherance of the effort to secure delivery of mail-matter to the proper party, pars. 3 and 4, § 634, and pars. 4 and 5, § 645, of Postal Laws and Regulations provide:

"SEC. 634, Par. 3. When a postmaster is in doubt as to the identity of the addressee, he may require proof, and should exercise great care, especially where mail matter appears to be of value, to make proper delivery.

"Par. 4. Where two or more persons of the same name receive mail at the same office the postmaster should advise them to adopt some address or means by which their mail may be distinguished. Postmasters will deliver such matter according to their best judgment, and will not return it to the mailing office for better description of the addressee until, after inquiry, they are unable to determine to whom it should be delivered."

"SEC. 645, Par. 4. Attempts to secure the mail of an established house, firm, or corporation through the adoption of a similar name should not be recognized. Where disputes arise between individuals, firms, or corporations as to the use of a name or designation, matter addressed to a street, number, or building should be delivered according to such address. When not so addressed, the mail will be delivered to the firm or corporation which first adopted the name of the address at that place.

"Par. 5. When in doubt as to the firm or corporation for which any mail matter is intended, and claim therefor is disputed, postmasters will withhold delivery and report the facts and any statements made by either claimant to the First Assistant Postmaster General, for advice."

Appellant contends that its legal name is "Central Trust Company" while the legal name of defendant is "Central Trust Company of Illinois;" that, therefore, it has a right to have mail directed to "Central Trust Company, Chicago," without further designation, delivered to it rather than to defendant. The argument primarily is that every corporation is entitled to the legal benefit of its own name; that when that name appears on mail-matter as the party addressed, and nothing else is shown, the postmaster has simply the ministerial duty of making a delivery to that corporation, and that a failure to discharge this ministerial duty can be corrected by the courts.

While in a certain sense it is true that the benefit of one's legal name belongs to every party, individual or corporation, yet that may not be the name by which it is customarily known or addressed, and of course the object is and must be to deliver the mail-matter to the party for whom it is intended. In the determination of this it may often be necessary to look beyond the exact legal name. Many things may have to be considered, and the action of an officer charged with that duty should not lightly be disturbed by the courts, and only when it is clear that a mistake has been made or a wrong

done. Initials are often used, abbreviations made, words left out. The number of letters delivered to the respective parties and the disposition made by each of those received may cast some light upon the question, for while a party for whom a single letter is intended has a right to receive it, yet the number of letters, taken in connection with the amount of business apparently done by the recipient, may well suggest for whom any given letter was intended, and the action taken by the recipient, when as here each knows of the existence of the other, may show its good or bad faith in dealing with the post office. So also the character of the business done may be considered. Where a corporation is engaged in the banking business letters from other banks will point to it as the intended recipient, while if it is a real estate corporation letters from real estate firms will indicate differently. And so we might go on and mention other things which, while by no means conclusive, tend to throw light on the matter.

We have had occasion to consider the effect of findings of fact by officers in charge of the several departments of government, and the accepted rule is that those findings are conclusive, unless palpable error appears. *Bates & Guild Co.* v. *Payne*, 194 U. S. 106, and cases cited in the opinion; *United States ex. rel. Parish* v. *MacVeagh, Secretary, &c.*, 214 U. S. 124, 131. In *National Life Insurance Company* v. *National Life Insurance Company*, 209 U. S. 317, it appeared that the Post Office Department had made a special order in reference to the delivery of mail, and the court was asked to correct that order. In denying this application the court, by Mr. Justice Peckham, said (p. 325):

"The appeal made by the complainant to the department was really nothing but an appeal to its discretion. . . . Assuming that the court in some cases has the power to, in effect, review the determination of the department, we do not think this is an occasion for its exercise. The complainant is really appealing from the discretion of the department to the discretion of the court, and the complainant has no clear

legal right to obtain the order sought. See *Bates & Guild Co.* v. *Payne*, 194 U. S. 106, 108.

"A court in such case ought not to interfere in the administration of a great department like that of the Post Office by an injunction, which directs the department how to conduct the business thereof, where the party asking for the injunction has no clear right to it."

We do not deem it necessary to consider other questions discussed by counsel, for, upon the facts presented and for the reasons stated, we are of opinion that there is not enough to show such clear right in the complainant as justifies the setting aside of the order of the First Assistant Postmaster General.

The decree is, therefore, *Affirmed.*

MISSOURI PACIFIC RAILWAY [illegible]